TEXAS REGISTER

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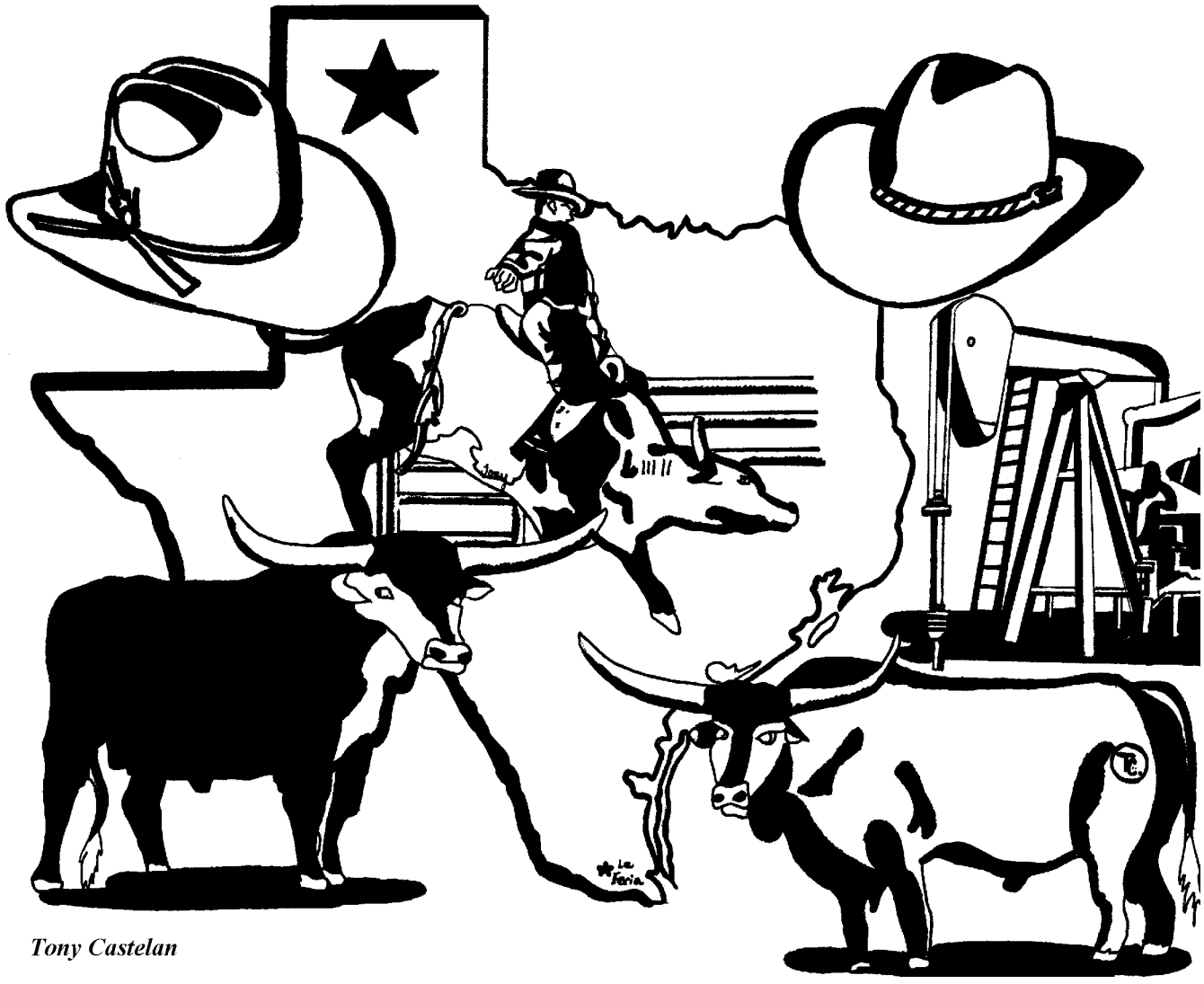

Tony Castelan

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.
http://www.sos.state.tx.us/texreg

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is http://www.oag.state.tx.us. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site. http://www.state.tx.us/Government

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Executive Order

RP 41

Relating to the creation, composition, and operation of the Governor's Criminal Justice Advisory Council for the State of Texas.

WHEREAS, a primary duty of government is to provide for the safety of its people by swiftly apprehending, convicting, and punishing the guilty while exonerating the innocent through a criminal justice system that is fair, just, and worthy of public confidence in its reliability; and

WHEREAS, the vast majority of convictions are based upon current legal procedures that are sound and ensure that the people's safety is paramount and that justice and fairness are meted out; and

WHEREAS, justice, fairness, and public confidence in the criminal justice system are enhanced when the state continually assesses whether there are ways to improve the system; and

WHEREAS, technological advances in forensic sciences, including advancements in DNA testing, can improve the public's confidence in rightful convictions or the exclusion of a suspect or defendant in some crimes; and

WHEREAS, public confidence in the fairness and justice of convictions and sentences could be further enhanced by continually reviewing state laws to determine if criminal procedures allow the use of new technologies; and

WHEREAS, judicial decisions sometimes necessitate the review of existing laws to determine whether courts have the necessary and adequate authority in appellate and post-conviction legal proceedings to ensure that justice is carried out; and

WHEREAS, public confidence in public safety and the rightful conviction of the guilty could be heightened by an advisory body that will impartially appraise the Governor of developing major legal issues affecting our criminal justice system;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas as the Chief Executive Officer, do hereby order the following:

1. *Creation of Council.* A Governor's Criminal Justice Advisory Council (the "Council") is hereby created to advise the Governor on matters related to adequacy of criminal justice procedures, from the investigation stage through the appellate and post-conviction legal process.

2. *Composition and Terms.* The Council shall consist of 9 members appointed by the Governor.

The Governor will designate one member to serve as the chair.

The Governor may fill any vacancy that may occur and may appoint other voting or *ex officio*, non-voting members as needed.

Any state or local officers or employees appointed to serve on the Council shall do so in addition to the regular duties of their respective offices or positions.

All appointees serve at the pleasure of the Governor.

3. *Duties.* The Council shall advise the Governor on:

• Procedures that are needed to meet advances in technology including matters of investigation, forensic testing, and the related appellate and post-conviction legal process.

• Methods of ensuring that both state and local law enforcement investigation procedures are accurate and available.

• Processes which provide access to local and state investigators, prosecutors, courts, and defendants which provide for public safety and confidence in convictions.

• Changes in law necessary to improve the criminal justice system.

• Any other matters the Governor may designate.

4. *Coordination.* The Council, through its advisory efforts, shall coordinate with national, state and local entities.

5. *Report.* The Council shall report its findings in writing to the Governor, the Lieutenant Governor, and the Speaker of the House at least annually beginning January 1, 2006, or at such other times the Council determines necessary.

6. *Meetings.* Subject to the approval of the Governor, the Council shall meet in Austin, Texas, on such matters that the Governor approves. The Council will not take testimony but shall receive input from the following:

• State law schools which have entities reviewing criminal convictions. These state law schools shall cooperate with the Council and provide written reports to the Council every six months beginning on September 15, 2005, identifying major issues that they determine have affected the system based on matters before them.

• State and local law enforcement agencies which investigate crimes. These agencies, after their internal review of major issues, may submit written reports reflecting matters affecting the system.

• Prosecutors and attorneys representing defendants. These attorneys may provide their unique perspectives on areas requiring improvement necessitated by judicial decisions, technological advances, and outmoded or outdated processes and procedures.

7. *Administrative Support.* The Office of the Governor and other appropriate state agencies shall provide administrative support for the Council.

8. *Other Provisions.* The Council shall adhere to guidelines and procedures prescribed by the Office of the Governor. All members of the Council shall serve without compensation. Necessary expenses may be reimbursed which such expenses are incurred in the direct performance of official duties of the Council.

This executive order supersedes all previous orders on this matter that are in conflict or inconsistent with its terms and this order shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 14th day of March, 2005.

Rick Perry, Governor

TRD-200501218

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THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0322-GA

Requestor:

The Honorable A.J. (Jack) Hartel

County Attorney

Liberty County

Post Office Box 9127

Liberty, Texas 77575-9127

Re: Allocation of county funds to a hospital district that does not comprise the entire county (Request No. 0322-GA)

Briefs requested by April 16, 2005

RQ-0323-GA

Requestor:

The Honorable Armando Villalobos

Cameron County District Attorney

Cameron County Courthouse

974 East Harrison

Brownsville, Texas 78520

Re: Whether a commissioners court may create the position of "magistrate" to assist a justice of the peace (Request No. 0323-GA)

Briefs requested by April 22, 2005

RQ-0324-GA

Requestor:

The Honorable Rex Emerson

Kerr County Attorney

County Courthouse Suite BA-103

700 Main Street

Kerrville, Texas 78028

Re: Whether an elected official may accept an honorarium from an association of elected officials (Request No. 0324-GA)

Briefs requested by April 22, 2005

For further information, please access the website at www.oag.state.tx.us. *or call the Opinion Committee at 512/463-2110.*

TRD-200501266
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: March 23, 2005

♦ ♦ ♦

Opinions

Opinion No. GA-0311

The Honorable Jeff Wentworth

Chair, Senate Jurisprudence Committee

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether an appraisal review board may schedule a hearing on a property tax protest and notify the property owner of the hearing time before the property owner has filed a written notice of protest (RQ-0274-GA)

S U M M A R Y

An appraisal review board lacks authority before a property owner has filed a written notice of protest to schedule a hearing on a property tax appraisal protest and to notify the property owner about the hearing time.

Opinion No. GA-0312

The Honorable Micheal B. Murray

35th Judicial District Attorney

200 South Broadway, Courthouse

Brownwood, Texas 76801

Re: Whether service as an assistant prosecutor employed by the district attorney of another state qualifies as service credit for longevity pay under Government Code section 41.252(a) (RQ-0275-GA)

S U M M A R Y

Government Code chapter 41, subchapter D provides for longevity pay for Texas assistant prosecutors. An assistant prosecutor does not receive lifetime service credits toward longevity pay for a period in which he is employed as a felony prosecutor by a district attorney's office in another state.

Opinion No. GA-0313

The Honorable Jeri Yenne

Brazoria County Criminal District Attorney

111 East Locust, Suite 408A

Angleton, Texas 77515

Re: Whether a county commissioners court may compel a justice of the peace to use a vendor under contract with the county to collect court fines, fees, and costs (RQ-0276-GA)

S U M M A R Y

A defendant in a matter described in section 706.002 of the Transportation Code who has failed to pay court-ordered fines or costs must pay both (1) a 30% fee if the county has contracted with a collection agent under Code of Criminal Procedure article 103.0031(g) and (2) a $30 fee if the county has entered a contract under Transportation Code section 706.002.

Under articles 103.003 and 103.0031 of the Code of Criminal Procedure, a county commissioners court may contract with a private collection agent to collect delinquent fines and court costs that were imposed by a justice court. The commissioners court may not thereby abrogate the justice court's authority to collect or otherwise dispose of the fines and costs, however.

Whether a collection agent may collect a 30% collection fee under article 103.0031(b) of the Code of Criminal Procedure on the $30 administrative fee levied under section 706.006 of the Transportation Code will depend on whether the $30 fee is 60 days past due.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200501253
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: March 22, 2005

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER D. VOTING SYSTEM CERTIFICATION

1 TAC §81.60

The Office of the Secretary of State, Elections Division, proposes an amendment to §81.60, concerning voting system examinations to require vendors to submit change logs with the application for certification of previously-certified voting systems and to provide that examiner reports shall be posted on the agency's website.

Ann McGeehan, Director of Elections, has determined that for the first five-year period the amended section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Ms. McGeehan has determined that for the first five-year period the amended section is in effect the public benefits expected as a result of adoption of the amended section will be to give voting system examiners more information with which to review changes to previously-certified voting systems and to increase public awareness of the voting system certification process. There will be no effect on small businesses, micro-businesses or individuals.

Comments on the proposal may be submitted to the Office of the Secretary of State, Ann McGeehan, Director of Elections, P.O. Box 12060, Austin, Texas 78711.

The amendment is proposed under the Texas Election Code, §31.003, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws.

Statutory Authority: Texas Election Code, Chapter 31, Subchapter A, §31.003.

Texas Election Code, §122.001 is affected by this amendment.

§81.60. Voting System Certification Procedures.

In addition to the procedures prescribed by the Texas Election Code, Chapter 122, compliance with the following procedures is required for certification of a voting system.

(1) The entity applying for certification must complete Forms 100 and 101 prescribed by the Secretary of State [~~secretary of state~~], and deliver them to the Secretary of State [~~secretary of state~~] no later than 45 days prior to examination.

(2) The applicant must deliver four copies of all relevant software and source codes, and six copies of any user and/or reference manuals, and six copies of the summary report(s) for all examinations conducted by a Nationally Recognized Test Laboratory (NRTL), declaring that the item meets the Federal Election Commission's minimum voting system requirements to the Office of the Secretary of State no later than 45 days prior to the examination. Applications for modifications to previously-certified voting systems must include a log detailing the changes from the previously-certified version of the system.

(3) The certification fee for a new system is $3,000 and must be received by the Secretary of State [~~secretary of state~~] 45 days prior to examination. The certification fee for a modification of a voting system shall be determined by the Secretary of State [~~secretary of state~~] according to the complexity of the modification and must be received by the Secretary of State [~~secretary of state~~] 45 days prior to the examination.

(4) - (5) (No change.)

(6) All physical examinations of voting systems will take place at the Office of the Secretary of State, Elections Division, in Austin, unless extenuating circumstances require otherwise.

(7) - (8) (No change.)

(9) Each examiner must submit a written report to the secretary of state stating his or her findings for each voting system no later than the 30th day after examination. Upon receipt, each examiner report shall be posted on the Secretary of State's website.

(10) - (11) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 22, 2005.

TRD-200501241
Ann McGeehan
Director of Elections
Office of the Secretary of State
Earliest possible date of adoption: May 1, 2005
For further information, please call: (512) 475-2821

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1 TAC §81.63

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the Office of the Secretary of State, Texas Register Division, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Office of the Secretary of State proposes the repeal of §81.63, concerning the review of previously-certified voting systems under House Bill 1419, 77th Session, 2001. The repeal will delete a section whose provisions already have been carried out by the Secretary of State. The rule had set the time frame and procedures for the mandated re-review of voting systems.

Ann McGeehan, Director of Elections, has determined that for the first five-year period the repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. McGeehan has determined also that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to eliminate an outdated rule. There will be no effect on small businesses, micro-businesses or individuals.

Comments on the proposal may be submitted to the Office of the Secretary of State, Ann McGeehan, Director of Elections, P.O. Box 12060, Austin, Texas 78711.

The repeal is proposed under the Texas Election Code, §31.003, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws.

Statutory Authority: Texas Election Code, §31.003.

Texas Election Code, §31.003, is affected by this proposed repeal.

§81.63. Review of Previously-Certified Voting Systems under §122.001 of the Texas Election Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 22, 2005.

TRD-200501242
Ann McGeehan
Director of Elections
Office of the Secretary of State
Earliest possible date of adoption: May 1, 2005
For further information, please call: (512) 475-2821

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1 TAC §81.65

The Office of the Secretary of State, Elections Division, proposes new §81.65, concerning administrative certifications of minor modifications to previously certified voting systems.

Ann McGeehan, Director of Elections, has determined that for the first five-year period that the new section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Ms. McGeehan has also determined that for each year of the first five years that the new section is in effect, the public benefit anticipated as a result of enforcing the section will be for the Secretary of State to codify procedures for requested administrative certification of minor modifications to previously certified voting systems as authorized under §122.064 of the Texas Election Code. There will be no effect on small businesses, micro-businesses or individuals.

Comments on the proposal may be submitted to Ann McGeehan, Director of Elections, Office of the Secretary of State, P.O. Box 12060, Austin, Texas 78711-2060.

The new section is proposed pursuant to Texas Elections Code, §122.064(a), which requires the Secretary of State to review applications for approval of a modified design to a previously certified voting system and under Texas Election Code, Chapter 31, Subchapter A, §31.003, which authorizes the Office of the Secretary of State to promulgate rules to obtain uniformity in the interpretation and application of the Code.

Statutory Authority: Texas Elections Code, §31.003 and §122.064(a).

No other sections are affected by the proposed section.

§81.65. Procedure for Administrative Certification of Minor Modifications to Previously-Certified Voting Systems.

(a) A voting system vendor who wishes to request administrative certification of minor modifications to a previously certified voting system shall submit the request to the Secretary of State in writing. The request also may be submitted by e-mail. The submission must contain sufficient information to identify the changes to the system's most recently certified version. The submission must contain either a statement from an independent testing authority (ITA) approving the proposed minor modifications or that the proposed minor modifications do not warrant examination by the ITA. The Secretary of State shall retain sole discretion in making the determination if the proposed minor modification qualifies for the administrative certification process described herein.

(b) In the event that the Secretary of State deems the proposed minor modification qualifies for the administrative certification process described herein, the Secretary of State shall forward a copy of the submitted materials to its employee voting systems examiner and one of the non-employee voting systems examiners, requesting an opinion on whether the proposed minor modifications warrant additional examination. The response from the two examiners must be in writing.

(c) Upon receipt of the two voting system examiners' responses, the Secretary of State shall make a prompt determination of whether or not to certify the proposed minor modifications without further examination. If the Secretary of State determines the proposed minor modifications may be certified without further examination, a letter to that effect shall be forwarded to the vendor. If the Secretary of State determines that the proposed minor modifications warrant further examination, the vendor shall be notified in writing or by e-mail.

(d) The Secretary of State shall forward a copy of the vendor's original request and the Secretary of State's final determination with respect to the vendor's request for administrative certification pursuant to the terms of this rule to the remaining voting systems examiners.

(e) A copy of the vendor's request for administrative certification shall be posted on the agency website immediately upon receipt. The Secretary of State shall accept written public comment on applications for administrative certification submitted in accordance with this rule. Comments shall be accepted by e-mail at elections@sos.state.tx.us or by regular mail at: Elections Division, Secretary of State, P.O. Box 12060, Austin, Texas 78711-2060.

(f) Copies of the examiners' reports related administrative certification shall be posted on the agency's website immediately upon receipt.

(g) A copy of the Secretary of State's final determination with respect to the vendor's request for administrative certification shall be posted on the agency's website within 5 business days after it is signed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 22, 2005.

TRD-200501243
Ann McGeehan
Director of Elections
Office of the Secretary of State
Earliest possible date of adoption: May 1, 2005
For further information, please call: (512) 475-2821

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SUBCHAPTER I. IMPLEMENTATION OF THE HELP AMERICA VOTE ACT OF 2002

1 TAC §§81.172 - 81.174

The Office of the Secretary of State, Elections Division, proposes amendments to §§81.172 - 81.174, concerning procedures for provisional balloting as required under Section 302 of the federal Help America Vote Act of 2002 ("HAVA").

Ann McGeehan, Director of Elections, has determined that for the first five-year period the amended sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections.

Ms. McGeehan has determined that for the first five-year period the amended sections are in effect the public benefits expected as a result of adoption of the amended sections will be to harmonize the provisional voting procedures with one another, adopt further changes suggested by counties and local political subdivisions, clarify the transfer responsibilities and procedures between the custodian of election records (and/or early voting ballot board judge) and voter registrar, address transfer procedures between voter registrars when provisional ballots are cast in the wrong precinct, add language from the late ballot counting rules of 1 TAC §81.37 to ensure consistency when provisional ballots are counted electronically, and harmonize the rules with changes in the provisional voting forms that have been created by the Secretary of State. There will be no effect on individuals, small businesses or micro-businesses. There will be no anticipated economic cost to the state or local governments.

Comments on the proposal may be submitted to the Office of the Secretary of State, Ann McGeehan, Director of Elections, P.O. Box 12060, Austin, Texas 78711.

The amendments are proposed under the Texas Election Code, §31.010, which provides the Office of the Secretary of State with the authority to adopt rules as necessary to implement the federal Help America Vote Act of 2002.

Statutory Authority: Texas Election Code, Chapter 31, Subchapter A, §31.003.

Texas Election Code §63.011 is affected by the amendments.

§81.172. Provisional Voting Procedures: Paper Ballot.

(a) (No change.)

(b) Eligibility to vote provisional ballots.

(1) At all elections, the following individuals shall be eligible to cast a provisional ballot:

(A) - (B) (No change.)

(C) A Voter who has applied for a ballot by mail, but has not returned the ballot by mail or cancelled the ballot with the main early voting clerk; or

(D) - (G) (No change.)

(H) A Voter who voted in another party's primary.

(2) (No change.)

(c) Polling Place Procedures for Hand-Counted Paper Ballot.

(1) - (4) (No change.)

(5) The Election Judge shall enter the Provisional Voter's name on the List [~~list~~] of Provisional Voter's form.

(6) - (7) (No change.)

(8) The Election Judge shall check the reason under which the Voter voted provisionally on the provisional ballot envelope. The reasons include:

(A) - (D) (No change.)

(E) Voter on list of persons who voted early by mail, Voter says he/she did not receive or return the ballot and refuses to cancel the ballot with the Early Voting Clerk; [~~or~~]

(F) First time Voter without any identification; [~~.~~]

(G) Voter who voted after 7:00 p.m. due to court order; or

(H) Voter who voted in another party's primary.

(9) - (13) (No change.)

(d) Early Voting By Personal Appearance Provisional Ballot Procedures.

(1) - (2) (No change.)

(3) When the Early Voting Ballot Board convenes, the early voting ballot board shall separate the provisional ballot envelopes from the regularly-cast [~~regularly cast~~] ballots and place them in a ballot box or transfer case for delivery to the Voter Registrar. The Voter Registrar shall sign the List of Early Voting Provisional Voters to verify receipt of the provisional ballot envelopes.

(4) (No change.)

(e) Provisional Ballot Affidavit Envelope transfer procedures

(1) (No change.)

(2) The Election Judge shall separate the Provisional Ballot Affidavit Envelopes from regular ballots during the counting phase, and shall secure the regularly-counted [~~regular counted~~] ballots in Ballot Box Number 3 and secure the provisional ballots in Ballot Box Number 4.

(3) - (8) (No change.)

(9) The General Custodian shall place the voted Provisional Ballot Affidavit Envelopes [~~Envelope~~] from all the election day precincts into a ballot box or transfer case with the corresponding List of Provisional Voters for each precinct.

(10) - (11) (No change.)

(12) A Poll Watcher, if available, may sign the Summary of Provisional Ballots.

(f) Transfer to Voter Registrar

(1) (No change.)

(2) If the Voter Registrar wishes to take possession of the ballot box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes [~~Envelope~~] from the General Custodian of election records on election night, the Voter Registrar must inform the General Custodian of election records and post a Notice of Election Night Transfer no later than 24 hours before election day. If the Voter Registrar makes this determination, the Voter Registrar must go to the General Custodian's office and take possession on election night.

(3) - (4) (No change.)

(5) The General Custodian of election records shall supply the Voter Registrar with a sufficient number of seals to re-seal the ballot box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes once his or her review is completed.

(6) - (7) (No change.)

(g) Voter Registrar Review of Provisional Ballot Affidavit Envelopes

(1) No later than the third business day after election day, the Voter Registrar shall complete the review of the Provisional Ballot Affidavit Envelopes. As part of the review, the Voter Registrar shall review information from the following sources to attempt to determine the Provisional Voter's registration status:

(A) the Department of Public Safety,

(B) Volunteer Deputy Registrars, and

(C) other records that may establish the Voter's eligibility. The Voter Registrar must examine each Provisional Ballot Affidavit Envelope, determine the Voter's registration status, and indicate the status on the face of the Provisional Ballot Affidavit Envelope as one of the following:

(i) [~~(A)~~] No record of voter registration application on file in this county;

(ii) [~~(B)~~] Registration cancelled on _____ (fill in date);

(iii) [~~(C)~~] Registered less than 30 days before the election;

(iv) [~~(D)~~] Incomplete registration received, but additional information not returned;

(v) [~~(E)~~] Voter rejected for registration due to ineligibility;

(vi) [~~(F)~~] Registered to vote, but erroneously listed in wrong precinct;

(vii) [~~(G)~~] Registered to vote in a different precinct within the county;

(viii) [~~(H)~~] Information on file indicating applicant completed a voter registration application, but it was never received in the Voter Registrar's office; [~~and/or~~]

(ix) [~~(I)~~] Voter erroneously removed from list of registered voters; [~~.~~]

(x) Voter is registered;

(xi) Voter voted in another party's primary; or

(xii) Other: _____ (with an explanation).

(2) (No change.)

(3) The Voter Registrar shall copy the Provisional Ballot Affidavit Envelope of each Voter who was not registered to vote, who was registered but whose information contains updated voter registration information, or who was erroneously cancelled or listed in the wrong precinct or for any other reason the Voter Registrar deems necessary.

(4) For purposes of voter registration, the copied Provisional Ballot Affidavit Envelope serves as an original voter registration application or change form; the effective date will be calculated as thirty days from the Election Date at which the Provisional Ballot Affidavit Envelope was submitted.

(5) If the residence address provided on the Provisional Ballot Affidavit Envelope falls outside the Voter Registrar's jurisdiction, the Voter Registrar shall forward a copy of the Provisional Ballot Affidavit Envelope to the appropriate Voter Registrar. The effective date of the transferred copy shall be calculated as thirty days from the election date on which the Provisional Ballot Affidavit Envelope was originally submitted. The original Provisional Ballot Affidavit Envelope shall be transferred to the appropriate Voter Registrar after the preservation period upon the Voter Registrar's request.

(6) [~~(5)~~] The Voter Registrar shall keep the Provisional Ballot Affidavit Envelopes separated by election precinct during the review. The Voter Registrar shall replace the Provisional Ballot Affidavit Envelopes in the same ballot boxes or other containers in which the Provisional Ballots Affidavit Envelopes were originally received for transfer to the Early Voting Ballot Board or General Custodian of election records, as designated by the General Custodian of election records, along with the List of Provisional Voters for each precinct. The copy of the Summary of Provisional Ballots is returned to the General Custodian. The box is relocked and resealed in the same manner in which it was received. The serial number of the seal shall be recorded on the Verification of Provisional Ballots and Serial Number form.

(7) The General Custodian of the election records or the Early Voting Ballot Board Judge shall pick up the secured ballot boxes or other containers and all other materials at the time, date, and location designated by the Voter Registrar.

(8) [~~(6)~~] The Voter Registrar shall sign the Verification of Provisional Ballots and Serial Numbers form verifying transfer, and the presiding judge of the Early Voting Ballot Board or General Custodian of election records shall sign indicating receipt of the Provisional Ballot Affidavit Envelopes and that the key and ballot box(es) was properly sealed.

(9) [~~(7)~~] Poll Watchers are not entitled to be present during the Voter Registrar's review.

(h) Early Voting Ballot Board defined. The authority appointing the Early Voting Ballot Board may determine which members of the board will review and count the provisional ballots. The entire ballot board is not required to be present. A minimum of three members of the board is required to conduct the review.

(i) Review of Provisional Ballot Affidavit Envelopes by Early Voting Ballot Board; Rules for Counting

(1) The presiding judge of the Early Voting Ballot Board shall take receipt of the Provisional Ballot Affidavit Envelopes from the Voter Registrar directly or via the General Custodian of election records at a time and place to be determined by the presiding judge.

(2) The presiding judge of the Early Voting Ballot Board may convene the board as soon as practicable after the Voter Registrar has completed the review of the provisional ballots. The judge must post a notice on the bulletin board used for posting notices of meetings

of the governing body ordering the election no later than 24 hours before the board is scheduled to meet. The board may also convene while the Voter Registrar continues his or her [the] review.

(3) (No change.)

(4) The Early Voting Ballot Board shall review both the Election Judge's and the Voter Registrar's notation on each Provisional Ballot Affidavit Envelope to determine whether or not the ballot should be counted as indicated below:

(A) - (K) (No change.)

(L) If either the Election Judge or the Voter Registrar indicates that the voter voted in another party's primary, the ballot shall not be counted.

(M) [(L)] The Voter Registrar has information in the office that the Voter did complete an application, and the Voter is otherwise qualified, the ballot shall be counted.

(N) [(M)] If the Voter was erroneously removed from list and Voter is otherwise qualified to vote, the ballot shall be counted.

(O) If the Voter Registrar indicates that the Voter is registered, the ballot shall be counted.

(5) - (6) (No change.)

(7) The ballots to be counted shall be removed from their Provisional Ballot Affidavit Envelopes and counted under the normal procedure for counting ballots by mail in the election. The presiding judge of the Early Voting Ballot Board shall make a return sheet of the votes and record the votes by precinct.

(8) - (9) (No change.)

(10) The List of Provisional Voters for each precinct shall be delivered to the General Custodian of election records in the Envelope for Accepted Provisional Ballot Affidavit Envelopes.

(11) - (16) (No change.)

(j) Request for Return of Original Envelopes. Upon request of the Voter Registrar, the General Custodian of election records shall deliver the original Provisional Ballot Affidavit Envelopes to the Voter Registrar after the preservation period.

(k) (No change.)

§81.173. Provisional Voting Procedures for Electronic Voting System: Optical Scan Precinct Ballot Counters.

(a) Polling Place Preparation[.]

(1) - (2) (No change.)

(b) Eligibility to vote provisional ballot.

(1) At all elections, the following Voters shall be eligible to cast a provisional ballot:

(A) - (B) (No change.)

(C) A Voter who has applied for a ballot by mail, but has not returned the ballot by mail or cancelled the ballot with the main early voting clerk; or

(D) - (G) (No change.)

(H) A Voter who voted in another party's primary.

(2) (No change.)

(c) Polling Place Procedures.

(1) - (4) (No change.)

(5) The Election Judge shall enter the Provisional Voter's name on the List [list] of Provisional Voter's form.

(6) - (7) (No change.)

(8) The Election Judge shall check the reason under which the Voter voted provisionally on the provisional ballot envelope. The reasons include:

(A) - (D) (No change.)

(E) Voter on list of persons who voted early by mail, Voter says he/she did not receive or return the ballot and refuses to cancel the ballot with the Early Voting Clerk; [or]

(F) First time Voter without any identification; [,]

(G) Voter who voted after 7:00 p.m. due to court order; or

(H) Voter who voted in another party's primary.

(9) - (13) (No change.)

(d) Early Voting Provisional Ballot Procedures.

(1) - (2) (No change.)

(3) The presiding judge shall direct the provisional ballot envelopes to be separated from the regularly-cast [regularly cast] ballots and placed in a ballot box or transfer case for delivery to the General Custodian of election records. The General Custodian shall deliver the provisional ballots to the Voter Registrar. The Voter Registrar shall sign the List of Early Voting Provisional Voters to verify receipt of the provisional ballot envelopes.

(4) (No change.)

(e) (No change.)

(f) Transfer to Voter Registrar.

(1) - (4) (No change.)

(5) The General Custodian of election records shall supply the Voter Registrar with a sufficient number of seals to re-seal the ballot box(es) or transfer case(s) containing the provisional ballots once his or her review is completed.

(6) - (7) (No change.)

(g) Voter Registrar Review of Provisional Ballot Affidavit Envelopes

(1) No later than the third business day after election day, the Voter Registrar shall complete the review of the Provisional Ballot Affidavit Envelopes. As part of the review, the Voter Registrar shall review information from the following sources to attempt to determine the Provisional Voter's registration status:

(A) the Department of Public Safety,

(B) Volunteer Deputy Registrars, and

(C) other records that may establish the Voter's eligibility. The Voter Registrar must examine each Provisional Ballot Affidavit Envelope, determine the Voter's registration status, and indicate the status on the face of the Provisional Ballot Affidavit Envelope as one of the following:

(i) [(A)] No record of voter registration application on file in this county;

(ii) [(B)] Registration cancelled on _____ (fill in date);

(iii) [~~(C)~~] Registered less than 30 days before the election;

(iv) [~~(D)~~] Incomplete registration received, but additional information not returned;

(v) [~~(E)~~] Voter rejected for registration due to ineligibility;

(vi) [~~(F)~~] Registered to vote, but erroneously listed in wrong precinct;

(vii) [~~(G)~~] Registered to vote in a different precinct within the county;

(viii) [~~(H)~~] Information on file indicating applicant completed a voter registration application, but it was never received in the Voter Registrar's office; and/or

(ix) [~~(I)~~] Voter erroneously removed from list of registered voters.

(x) Voter is registered;

(xi) Voter voted in another party's primary; or

(xii) Other: _____ (with explanation).

(2) (No change.)

(3) The Voter Registrar shall copy the Provisional Ballot Affidavit Envelope of each Voter who was not registered to vote, who was registered but whose information contains updated voter registration information, or who was erroneously cancelled or listed in the wrong precinct or for any other reason the Voter Registrar deems necessary.

(4) For purposes of voter registration, the copied Provisional Ballot Affidavit Envelope serves as an original voter registration application or change form; the effective date will be calculated as of the Election Date for which the Provisional Ballot Affidavit Envelope was submitted.

(5) If the residence address provided on the Provisional Ballot Affidavit Envelope falls outside the Voter Registrar's jurisdiction, the Voter Registrar shall forward a copy of the Provisional Ballot Affidavit Envelope to the appropriate Voter Registrar. The effective date of the transferred copy shall be calculated as thirty days from the election date on which the Provisional Ballot Affidavit Envelope was originally submitted. The original Provisional Ballot Affidavit Envelope shall be transferred to the appropriate Voter Registrar after the preservation period upon the Voter Registrar's request.

(6) [~~(5)~~] The Voter Registrar shall keep the Provisional Ballot Affidavit Envelopes separated by election precinct during the review. The Voter Registrar shall replace the Provisional Ballot Affidavit Envelopes in the same ballot boxes or other containers in which the Provisional Ballot Affidavit Envelopes were originally received for transfer to the Early Voting Ballot Board or General Custodian of election records, as designated by the General Custodian of election records, along with the List of Provisional Voters for each precinct. The copy of the Summary of Provisional Ballots is returned to the General Custodian. The box is relocked and resealed in the same manner in which it was received. The serial number of the seal shall be recorded on the Verification of Provisional Ballots and Serial Number form.

(7) The General Custodian of the election records or the Early Voting Ballot Board Judge shall pick up the secured ballot boxes or other containers and all other materials at the time, date, and location designated by the Voter Registrar.

(8) [~~(6)~~] The Voter Registrar shall sign the Verification of Provisional Ballots and Serial Numbers form verifying transfer, and the presiding judge of the Early Voting Ballot Board shall sign indicating receipt of the Provisional Ballot Affidavit Envelopes and that the key and ballot box(es) was properly sealed.

(9) [~~(7)~~] Poll Watchers are not entitled to be present during the Voter Registrar's review.

(h) (No change.)

(i) Review of Provisional Ballot Affidavit Envelopes by Early Voting Ballot Board; Counting Rules.

(1) The presiding judge of the Early Voting Ballot Board shall take receipt of the Provisional Ballot Affidavit Envelopes from the Voter Registrar directly or via the General Custodian of election records at a time and place to be determined by the presiding judge.

(2) The presiding judge of the Early Voting Ballot Board may convene the board as soon as practicable after the Voter Registrar has completed the review of the provisional ballots. The judge must post a notice on the bulletin board used for posting notices of meetings of the governing body ordering the election no later than 24 hours before the board is scheduled to meet. The board may also convene while the Voter Registrar continues his or her [~~the~~] review.

(3) (No change.)

(4) The Early Voting Ballot Board shall review both the Election Judge's and the Voter Registrar's notation on each Provisional Ballot Affidavit Envelope to determine whether or not the ballot should be counted as indicated below:

(A) - (K) (No change.)

(L) If either the Election Judge or the Voter Registrar indicates that the voter voted in another party's primary, the ballot shall not be counted.

(M) [~~(L)~~] The Voter Registrar has information in the office that the Voter did complete an application, and the Voter is otherwise qualified, the ballot shall be counted.

(N) [~~(M)~~] If the Voter was erroneously removed from list and Voter is otherwise qualified to vote, the ballot shall be counted.

(O) If the Voter Registrar indicates that the Voter is registered, the ballot shall be counted.

(5) - (6) (No change.)

(7) The ballots to be counted shall be removed from their Provisional Ballot Affidavit Envelopes and counted under the normal procedure for counting ballots by mail in the election, unless the manager of the central counting station [~~presiding judge of the ballot board~~] decides that the ballot board shall count the ballots manually and add the totals to the computer count for a canvass total [~~to count ballots by hand~~]. See paragraph (9) of this subsection for electronic procedures, if the manager decides to count ballots in regular manner. If counted by hand, the ballots are tallied by precinct in the regular manner. The board prepares the returns and submits the returns to the General Custodian of election records.

(8) (No change.)

(9) If the provisional ballots are to be counted electronically:

(A) The manager of the central counting station shall decide whether the ballot board shall manually count the ballots and be manually added to the computer count for a canvass total or whether the central counting station shall reconvene.

(B) The manager shall send notice to the presiding judge of the ballot board prior to reconvening the board as to whether the ballots are to be counted manually by the board or whether the ballots are merely to be prepared for delivery to the central counting station.

(C) The manager must order a second test to be conducted prior to the count. The test must be successful.

(D) After the second successful test is conducted, the unofficial election results, preserved by electronic means, shall be loaded in the tabulating equipment.

(E) Once the ballots have been counted, results shall be prepared in the regular manner. The manager shall prepare a certification and attach it to the returns, then place the certification and returns in envelope #1 to be delivered to the presiding officer of the canvassing board indicating that the result supersedes any returns printed prior to the reconvening of the central counting station after election day.

(F) After the results have been prepared, a successful third test must be performed.

(G) The results, ballots, and distribution of ballots and all records shall be made in the regular manner.

[~~(A) Prior to the beginning of the count at a central counting station, the manager shall run the required second logic and accuracy test using the same test deck as on Election Day. After the count is complete, the manager shall run the required third logic and accuracy test. If the test is not successful, the count is void.~~]

[~~(B) The central counting manager may add the provisional ballots to the original returns by hand in order to provide one complete return sheet or may provide a return sheet with just provisional ballot vote totals. The return sheets are distributed in the same manner as on Election Day.~~]

[~~(C) The counted Provisional Ballot Affidavit Envelopes are secured and returned to the General Custodian of election records to be retained for the appropriate preservation period.~~]

(10) (No change.)

(11) The List of Provisional Voters for each precinct shall be delivered to the General Custodian of election records in the Envelope for Accepted Provisional Ballot Affidavit Envelopes.

(12) - (16) (No change.)

(j) Request for Return of Original Envelopes. Upon request of the Voter Registrar, the General Custodian of election records shall deliver the original Provisional Ballot Affidavit Envelopes to the Voter Registrar after the preservation period.

(k) (No change.)

§81.174. Provisional Voting Procedures for Punch Card and Optical Scan Voting System Ballots Tabulated at a Central Counting Station.

(a) (No change.)

(b) Eligibility to vote provisional ballot

(1) At all elections, the following individuals shall be eligible to cast a provisional ballot:

(A) - (B) (No change.)

(C) A Voter who has applied for a ballot by mail, but has not returned the ballot by mail or cancelled the ballot with the mail early voting clerk; or

(D) - (G) (No change.)

(H) A Voter who voted in another party's primary.

(2) (No change.)

(c) Polling Place Procedures.

(1) - (7) (No change.)

(8) The Election Judge shall check the reason under which the Voter voted provisionally on the provisional ballot envelope. The reasons include:

(A) - (D) (No change.)

(E) Voter on list of persons who voted early by mail, Voter says he/she did not receive or return the ballot and refuses to cancel the ballot with the Early Voting Clerk; [~~or~~]

(F) First time Voter without any identification; [~~,~~]

(G) Voter voted after 7:00 p.m. due to court order; or

(H) Voter voted in another party's primary.

(9) - (13) (No change.)

(d) Early Voting By Personal Appearance Provisional Ballot Procedures.

(1) - (2) (No change.)

(3) The central counting station manager shall direct the provisional ballot envelopes to be separated from the regularly-cast [~~regularly cast~~] ballots and placed in a ballot box or transfer case for delivery to the Voter Registrar. The Voter Registrar shall sign the List of Early Voting Provisional Voters to verify receipt of the provisional ballot envelopes.

(4) (No change.)

(e) (No change.)

(f) Transfer to Voter Registrar.

(1) - (4) (No change.)

(5) The General Custodian of election records shall supply the Voter Registrar with a sufficient number of seals to re-seal the ballot box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes once his or her review is completed.

(6) - (8) (No change.)

(g) Voter Registrar Review of Provisional Ballot Affidavit Envelopes.

(1) No later than the third business day after election day, the Voter Registrar shall complete the review of the Provisional Ballot Affidavit Envelopes. As part of the review, the Voter Registrar shall review information from the following sources to attempt to determine the Provisional Voter's registration status:

(A) the Department of Public Safety,

(B) Volunteer Deputy Registrars, and

(C) other records that may establish the Voter's eligibility. The Voter Registrar must examine each Provisional Ballot Affidavit Envelope, determine the Voter's registration status, and indicate the status on the face of the Provisional Ballot Affidavit Envelope as one of the following:

(i) [~~(A)~~] No record of voter registration application on file in this county;

(ii) [~~(B)~~] Registration cancelled on _____ (fill in date);

(iii) [~~(C)~~] Registered less than 30 days before the election;

(iv) [~~(D)~~] Incomplete registration received, but additional information not returned;

(v) [~~(E)~~] Voter rejected for registration due to ineligibility;

(vi) [~~(F)~~] Registered to vote, but erroneously listed in wrong precinct;

(vii) [~~(G)~~] Registered to vote in a different precinct within the county;

(viii) [~~(H)~~] Information on file indicating applicant completed a voter registration application, but it was never received in the Voter Registrar's office; and/or

(ix) [~~(I)~~] Voter erroneously removed from list of registered voters.

(x) Voter is registered;

(xi) Voter voted in another party's primary; or

(xii) Other: _____ (with an explanation).

(2) (No change.)

(3) The Voter Registrar shall copy the Provisional Ballot Affidavit Envelope of each Voter who was not registered to vote, who was registered but whose information contains updated voter registration information, or who was erroneously cancelled or listed in the wrong precinct or for any other reason the Voter Registrar deems necessary.

(4) For purposes of voter registration, the copied Provisional Ballot Affidavit Envelope serves as an original voter registration application or change form; the effective date will be calculated as of the Election Date for which the Provisional Ballot Affidavit Envelope was submitted.

(5) If the residence address provided on the Provisional Ballot Affidavit Envelope falls outside the Voter Registrar's jurisdiction, the Voter Registrar shall forward a copy of the Provisional Ballot Affidavit Envelope to the appropriate Voter Registrar. The effective date of the transferred copy shall be calculated as thirty days from the election date on which the Provisional Ballot Affidavit Envelope was originally submitted. The original Provisional Ballot Affidavit Envelope shall be transferred to the appropriate Voter Registrar after the preservation period upon the Voter Registrar's request.

(6) [~~(5)~~] The Voter Registrar shall keep the envelopes separated by election precinct during the review. The Voter Registrar shall replace the Provisional Ballot Affidavit Envelopes in the same ballot boxes or other containers in which the Provisional Ballot Affidavit Envelopes were originally received for transfer to the Early Voting Ballot Board or General Custodian of election records, along with the List of Provisional Voters for each precinct. The copy of the Summary of Provisional Ballots is returned to the General Custodian. The box is relocked and resealed in the same manner in which it was received. The serial number of the seal shall be recorded on the Verification of Provisional Ballots and Serial Number form.

(7) The General Custodian of the election records or the Early Voting Ballot Board Judge shall pick up the secured ballot boxes or other containers and all other materials at the time, date, and location designated by the Voter Registrar.

(8) [~~(6)~~] The Voter Registrar shall sign the Verification of Provisional Ballots and Serial Numbers form verifying transfer, and the presiding judge of the Early Voting Ballot Board or General Custodian of election records shall sign indicating receipt of the Provisional Ballot Affidavit Envelopes and that the key and ballot box(es) was properly sealed.

(9) [~~(7)~~] Poll Watchers are not entitled to be present during the Voter Registrar's review.

(h) Early Voting Ballot Board defined. The authority appointing the Early Voting Ballot Board may determine which members of the board will review and count the provisional ballots. The entire ballot board is not required to be present. A minimum of three members of the board is required to conduct the review.

(i) Review of Provisional Ballot Affidavit Envelopes by Early Voting Ballot Board; Counting Rules.

(1) The presiding judge of the Early Voting Ballot Board shall take receipt of the Provisional Ballot Affidavit Envelopes from the Voter Registrar directly or via the General Custodian of election records at a time and place to be determined by the presiding judge.

(2) The presiding judge of the Early Voting Ballot Board may convene the board as soon as practicable after the Voter Registrar has completed the review of the provisional ballots. The judge must post a notice on the bulletin board used for posting notices of meetings of the governing body ordering the election no later than 24 hours before the board is scheduled to meet. The board may also convene while the Voter Registrar continues his or her [~~the~~] review.

(3) (No change.)

(4) The Early Voting Ballot Board shall review both the Election Judge's and the Voter Registrar's notation on each Provisional Ballot Affidavit Envelope to determine whether or not the ballot should be counted as indicated below:

(A) - (K) (No change.)

(L) If either the Election Judge or the Voter Registrar indicates that the Voter voted in another party's primary, the ballot shall not be counted.

(M) [~~(L)~~] The Voter Registrar has information in the office that the Voter did complete an application, and the Voter is otherwise qualified, the ballot shall be counted.

(N) [~~(M)~~] If the Voter was erroneously removed from list and Voter is otherwise qualified to vote, the ballot shall be counted

(O) If the Voter Registrar indicates that the Voter is registered, the ballot shall be counted.

(5) - (6) (No change.)

(7) The ballots to be counted shall be removed from their Provisional Ballot Affidavit Envelopes and counted in the regular manner, unless the manager of the central counting station decides that the ballot board shall count the ballots manually and add the totals to the computer count for a canvass total. See paragraph (9) of this subsection for electronic procedures, if the manager decides to count ballots in regular manner. [~~presiding judge of the ballot board decides to count the ballots by hand.~~] If counted by hand, the ballots are tallied by precinct in the regular manner. The board prepares the returns and submits the returns to the General Custodian of election records.

(8) (No change.)

(9) If the provisional ballots are to be counted electronically:

(A) The manager of the central counting station shall decide whether the ballot board shall manually count the ballots and be manually added to the computer count for a canvass total or whether the central counting station shall reconvene.

(B) The manager shall send notice to the presiding judge of the ballot board prior to reconvening the board as to whether the ballots are to be counted manually by the board or whether the ballots are merely to be prepared for delivery to the central counting station.

(C) The manager must order a second test to be conducted prior to the count. The test must be successful.

(D) After the second successful test is conducted, the unofficial election results, preserved by electronic means, shall be loaded in the tabulating equipment.

(E) Once the ballots have been counted, results shall be prepared in the regular manner. The manager shall prepare a certification and attach it to the returns, then place the certification and returns in envelope #1 to be delivered to the presiding officer of the canvassing board indicating that the result supersedes any returns printed prior to the reconvening of the central counting station after election day.

(F) After the results have been prepared, a successful third test must be performed.

(G) The results, ballots, and distribution of ballots and all records shall be made in the regular manner.

~~[(A) Prior to the beginning of the count at a central counting station, the manager shall run the required second logic and accuracy test using the same test deck as on Election Day. After the count is complete, the manager shall run the required third logic and accuracy test. If the test is not successful, the count is void.]~~

~~[(B) The central counting manager may add the provisional ballots to the original returns by hand in order to provide one complete return sheet or may provide a return sheet with just provisional ballot vote totals. The return sheets are distributed in the same manner as on Election Day.]~~

~~[(C) The counted provisional ballots are returned to the General Custodian of election records and retained for the appropriate preservation period.]~~

(10) The List of Provisional Voters for each precinct shall be delivered to the General Custodian of election records in the Envelope for Accepted and Provisional Ballot Affidavit Envelopes.

(11) - (15) (No change.)

(j) Request for Return of Original Envelopes. Upon request of the Voter Registrar, the General Custodian of election records shall deliver the original Provisional Ballot Affidavit Envelopes to the Voter Registrar after the preservation period.

(k) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 22, 2005.

TRD-200501244

Ann McGeehan
Director of Elections
Office of the Secretary of State
Earliest possible date of adoption: May 1, 2005
For further information, please call: (512) 475-2821

♦ ♦ ♦

TITLE 10. COMMUNITY DEVELOPMENT

PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM

SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

10 TAC §255.7

The Office of Rural Community Affairs (Office) proposes amendments to §255.7, concerning the allocation of Community Development Block Grant (CDBG) non-entitlement area funds under the Texas Community Development Program (TCDP).

The amendments are being proposed to establish the standards and procedures by which the Office and the Texas Department of Agriculture will allocate and distribute 2005 program funds under the Texas Capital Fund. The amendments are being proposed to make changes to the application and selection criteria for the programs available under the Texas Capital Fund.

Charles S. Stone, Executive Director of the Office, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Stone also has determined that for the period that the amendments are in effect, the public benefit as a result of enforcing the amended section will be the equitable allocation of CDBG non-entitlement area funds to eligible units of general local government in Texas. There will be an effect on small businesses or micro-businesses as two new programs are being proposed to assist small businesses and micro-businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is an anticipated impact on local employment if new jobs are created or retained under the proposed new microenterprise and small business programs.

Comments on the proposal may be submitted to Jerry Hill, General Counsel, Office of Rural Community Affairs, P.O. Box 12877, Austin, Texas 78711, telephone: (512) 936-6701. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The amendments are proposed under §487.052 of the Government Code, which provides the executive committee with the authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the proposed amendments.

§255.7. Texas Capital Fund.

(a) General Provisions. This fund covers projects which will result in either an increase in new, permanent employment within a community or retention of existing permanent employment. Under the main street improvements and downtown revitalization programs, [~~program,~~] projects must qualify to [~~may also qualify if they~~] meet the national program objective of aiding in the prevention or elimination of slum or blighted areas.

(1) (No change.)

(2) If the project is designed to aid in the prevention or elimination of slum or blighted areas, then it must meet the area slum or blight or spot slum or blight criteria and threshold requirements outlined in the separate main street or downtown revitalization program applications [~~application~~].

(3) (No change.)

(4) The leverage ratio between all funding sources to the Texas Capital Fund (TCF) request may not be less than 1:1 for awards of $750,000 or less; and 4:1 for awards of $750,000 to $1,000,000. The main street and downtown revitalization programs require a minimum 0.1:1 match. [~~The main street program requires a minimum 0.2:1 match. The downtown revitalization program requires a minimum 0.1:1 match.~~]

(5) (No change.)

(6) No financial assistance will be provided to projects involved in the relocation of any industrial or commercial plant, facility or operation, from one state to another state, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs. No assistance will be provided for projects intended to facilitate the relocation of any industrial or commercial plant, facility or operation from one unit of general local government within Texas to another unit of general local government within Texas unless a 10% net gain of jobs will occur and one [~~or more~~] of the following requirements has been met prior to submitting an application for consideration under this section:

(A) (No change.)

[~~(B) Business to relocate out-of state. Business must provide written documentation between business and out-of-state contact verifying the business has secured out-of-state location.~~]

(B) [~~(C)~~] Local government notification with no response. Local government must provide written documentation that a letter has been mailed (by registered mail) to the local government from which the business is relocating, notifying it of the relocation. The local government, upon receipt of the notification, then has 30 days to object to the relocation, in writing, to the TDA before the TCF application can be considered. A written objection to a relocation from a local government will prevent the application from being considered.

(7) - (8) (No change.)

(9) The TDA may consider applications in the real estate and infrastructure improvement programs that provide funding to benefit a maximum of three (3) businesses. [~~With the exception of the main street program and the downtown revitalization program, the TDA will only consider applications that provide funding for one business.~~]

(10) The TDA will consider a project proposed by a city that is in the city's corporate limits or its extraterritorial jurisdiction, and will consider a project proposed by a county that is in the unincorporated area of the county. Counties may not sponsor an application for a business located in a city, if that business is currently participating in a TCF project with that city. TDA may consider providing funding for an economic development project proposed by a city that is outside the city's corporate limits or extraterritorial jurisdiction, but within the county or contiguous counties (not to exceed five (5) miles beyond the city's extra-territorial jurisdiction that the city is located in and will consider a project proposed by a county that is within an incorporated city, if the applicant demonstrates that the project is appropriate to meet its needs, if the applicant has the legal authority to engage in such a project and if at least fifty-one percent (51%) of the principal beneficiaries reside within the applicant's jurisdiction.

(11) A TCF contractor must satisfactorily close out a contract in support of a specific business, downtown revitalization project, or main street project in order to be eligible to receive additional funds under the TCF for the same business, downtown project, or main street city. The contractor is eligible for an additional TCF award in support of a specific business, provided that the prerequisite program income choice has been selected, if the assisted business is not in the designated main street or downtown business district geographic area [~~or if the main street project selected the elimination of slums and blight as its national program objective~~] and the assisted business will create or retain jobs to meet the national program objective.

(12) (No change.)

(13) The minimum and maximum award amount that may be requested/awarded for a project funded under the TCF infrastructure or real estate development programs, regardless of whether the application is submitted by a single applicant or jointly by two or more eligible jurisdictions is addressed here. Award amounts are directly related to the number of jobs to be created/retained and the level of matching funds in a project. Projects that will result in a significantly increased level of jobs created/retained and a significant increase in the matching capital expenditures may be eligible for a higher award amount, commonly referred to as jumbo awards. TCF monies are not specifically reserved for projects that could receive the increased maximum award amount, however, jumbo awards may not exceed $2 million in total awards during the program year. Additionally, no more than $1 million in jumbo awards will be approved in any round. The maximum amount for a jumbo award is $1 million and the minimum award amount is $750,100 [~~$750,001~~]. The maximum amount for a normal award is $750,000 and the minimum award amount is $50,000. These amounts are the maximum funding levels. The program can fund only the actual, allowable, and reasonable costs of the proposed project, and may not exceed these amounts. All projects awarded under the TCF program are subject to final negotiation between TDA and the applicant regarding the final award amount, but at no time will the award exceed the amount originally requested in the application.

(14) (No change.)

(b) (No change.)

(c) Application Dates. The TCF (except for the main street program and the downtown revitalization program) is available up to four [~~three~~] times during the year, on a competitive basis, to eligible applicants statewide. Applications for the main street program and the downtown revitalization program are accepted annually. Applications will not be accepted after 5:00 pm on the final day of submission. The application deadline dates are included in the program guidelines.

(d) (No change.)

(e) Application process for the infrastructure and real estate programs. The TDA will only accept applications during the months identified in the program guidelines. Applications are reviewed after they have been competitively scored. Staff makes recommendation for award to the TDA Commissioner. The TDA Commissioner [~~TDA executive director. TDA executive director~~] makes the final decision. The application and selection procedures consist of the following steps:

(1) - (9) (No change.)

(f) Scoring criteria for the infrastructure and real estate programs. There is a minimum 25-point threshold requirement. Applications will be reviewed for feasibility in descending order based on the scoring criteria. There are a total of 100 points possible.

(1) (No change.)

(2) Community Need (maximum 60 points). Measures the economic distress of the applicant community.

(A) - (E) (No change.)

(F) Community Income (maximum 10 points). Ten points awarded to communities that have a low and moderate income level for a 4 person household that is in the bottom 90% of all county level 4 person low and moderate income levels, as provided in Appendix D of the application.

(3) Jobs (maximum 20 points).

(A) Job Impact (maximum 10 points). Awarded by taking the business' total job commitment, created & retained, and dividing by applicant's 2000 unadjusted population. This equals the job impact ratio. Score 5 points if this figure exceeds the median job impact ratio for prior years; and score 10 points if this figure exceeds 200% of the ratio. County applicants should deduct the 2000 census population amounts for all incorporated cities, except in the case where the county is sponsoring an application for a business that is or will be located in an incorporated city. In this case the city's population would be used, rather than the county's. Community population figures are net of the population held in adult or juvenile correctional institutions, as shown in the 2000 census data.

(B) (No change.)

(4) (No change.)

(g) (No change.)

(h) Application process for the main street program. The application and selection procedures consist of the following steps:

(1) - (7) (No change.)

(8) The contract is drafted and then reviewed by management and legal prior to two copies being mailed to award recipient. Upon receipt, [~~unless an extension is granted,~~] award recipient has 30 days to review and execute both copies. Once returned to TDA, the contract will be fully executed by the Commissioner or the Commissioner's designee and then a single copy is returned to contractor.

(i) Scoring criteria for the main street program. There is a minimum 25-point threshold requirement. Applications will be reviewed for feasibility and placed in descending order based on the scoring criteria. There is a total of 100 points possible.

(1) In the event of a tie score, the following tie breaker criteria will be used. [~~applications are ranked from the lowest to the highest based on the current aggregate available balance, from all existing open TCF contracts. Thus, an applicant that has a TCF project balance of $250,000 in existing projects would be ranked above one having a balance of $600,000.~~]

(A) The tying applications are ranked from lowest to highest based on the applicant's most recently available annual county poverty rate, as provided in Appendix A of the application. Thus, preference is given to the applicant with the higher poverty rate.

(B) If a tie still exists after applying the first criteria, then applications are ranked from lowest to highest based on the most recently available, quarterly, city unemployment rate provided by the Texas Workforce Commission. Thus, preference is then given to the applicant with the higher unemployment rate.

(2) Project Feasibility (maximum 70 points). Measures the applicant's potential for a successful project. Each applicant must submit detailed and complete support documentation for each category. Compliance with the ten criteria for Main Street Recognition is required. First year Main Street Cities must receive prior approval from THC to apply and must submit the Main Street Criteria for Recognition Survey with the TCF application. The criteria include the following:

(A) Broad-based public support for the proposed project [~~commercial district revitalization~~]--(10 [~~5~~] points). [~~Each letter of support is worth one-half of a point. To receive any points in this category, the applicant must submit a letter of support from the County Historical Commission.~~] Show letters of support from the following:

(i) one (1) letter from the County Historical Commission (A letter of support from the County Historical Commission is required to receive any points in this category.)

(ii) Score 5 points for letters from 50% or more of the businesses and/or property owners in the designated Main Street program area. Score 10 points for letters from 75% of the businesses in the designated Main Street program area. [~~five (5) letters from merchants and/or property owners in the affected area~~]

~~*[(iii)* two (2) letters from civic organizations]~~

~~*[(iv)* two (2) letters from other local organizations that are stakeholders]~~

(B) Infrastructure Project Plan--(10 [~~5~~] points). Show the city's plan for dealing with an infrastructure project. Develop a plan for access to local business during the infrastructure project. Provide public notification to support the project.

~~[(C) Identification of goals--(10 points). Identify long-term downtown infrastructure plan. List in broad terminology the goals of the project. Indicate in detail how the project is a component of the overall downtown infrastructure plan. How do the goals of this project tie into the overall goals of the city's Main Street program.]~~

(C) [~~(D)~~] ADA Compliance Goals--(10 points). Does the project address ADA accessibility issues. How will ADA issues be addressed in the project. If project does not address ADA compliance issues, is the Main Street District in compliance with Federal ADA standards. If the project does not address ADA compliance, no points will be awarded for this category. Partial points may be awarded depending upon the degree in which the project addresses ADA compliance issues.

~~[(E) Adequate operating budget--(10 points). To be successful, a Main Street program must have the financial resources necessary to carry out its work plan. The size of a program's budget will change as the program matures and is likely to vary according to regional economic differences and community economic differences. Please attach a copy of your operating budget, plus any other funding you have accessed this year. If your budget information is included with other city departments, please separate yours from the others. Please also include the Main Street manager's salary and whether the position is staffed on a full-time or part-time basis.]~~

(D) [~~(F)~~] Historic Preservation Ethic and Preservation Impact--Main Street's Role--(10 points). Preservation is a major component of the Texas Historical Commission's Main Street program. Officially designated cities [~~Cities~~] are eligible for the Texas Capital Fund grant based on their inclusion in the Texas Main Street program. Points will be awarded if the applicant has successfully addressed the

criteria as follows: if the applicant successfully addressed the issue of enhancing historic assets and/or historic preservation goals, up to 5 points may be awarded. If the applicant has demonstrated that they have a current historic preservation ordinance, up to 3 points may be awarded based upon the content of the ordinance. Up to 2 points may be awarded for historic preservation-related programs or incentives. The THC mission is "To protect and preserve the state's historic and prehistoric resources for the use, education, enjoyment and economic benefit of present and future generations." Therefore, in the interest of accomplishing our mission, please answer the following:

(i) Describe how the proposed Texas Capital Fund project enhances your historic assets or historic preservation goals. [~~Is the community a designated Certified Local Government?~~]

(ii) Does the city have a current historic preservation ordinance?

(iii) Does the city have any historic preservation related programs or incentives? [~~a landmark Commission of a Preservation Review Board?~~]

(iv) List any building demolitions within your Main Street project area during the past five years. If you had any building demolitions in the past five years, what was the age of the buildings that were demolished? [~~Does the city have a Main Street Low Interest Loan Program?~~]

~~*(v)* Does the city have a Main Street Façade Improvements Grant Program?~~]

~~*(vi)* Does the city have an active County Historical Commission? If so, please provide a copy of the minutes from the last meeting.~~]

~~*(vii)* Does the city have a local marker program?~~]

~~*(viii)* Does the city have a National Register District?~~]

~~*(ix)* Does the city have any historical markers? If so, how many?~~]

~~*(x)* Does the city have a recorded Texas historic landmark? If so, when was the last designation?~~]

~~*(xi)* Does the city have Main Street design guidelines in place?~~]

~~*(xii)* Does the city have a downtown survey?~~]

~~*(xiii)* Does the city have a current building survey?~~]

~~*(xiv)* Does the city have a preservation master plan?~~]

~~*(xv)* Does the city have a historic driving or walking tour?~~]

~~*(xvi)* Does the city have a Junior Main Street Board?~~]

~~*(xvii)* List and building demolitions during the past five years. If you had any building demolitions in the past five years, what was the age of the buildings that were demolished?~~]

(E) [~~(G)~~] State Enterprise Zone and Economic Development Consideration--(10 points) Four points will be awarded if the city has a nominated or active Enterprise Zone project. Three points will be awarded if the city has the economic development sales tax (4A, 4B or both). Three points may be awarded for other viable economic development programs the city offers in order to further realize its full economic development potential. Please document any other economic development programs and strategies that your city is engaged in. [~~Project Impact--State Enterprise Zone--(5 points)~~]

(F) [~~(H)~~] Community Size [~~Community Development Potential~~]--(10 points). Score 5 points if the population of the city is 12,000 or less; score additional 5 points if the population is less than 4,000, using 2000 census data. City population figures are net of the population held in adult or juvenile correctional institutions, as shown by the 2000 census data. [~~In this category scoring members rank the cities on the following factors:~~]

~~*(i)* economic development need~~]

~~*(ii)* potential for economic development~~]

~~*(iii)* geographic distribution~~]

~~*(iv)* feasibility of proposed Texas Capital Fund project~~]

~~*(v)* community need for the project~~]

(G) [~~(I)~~] Main Street Program Participation [~~Local Main Street program training~~]--(5 points). Points are awarded on the applicant's continuous participation in the Main Street program as follows: For every two years of continuous participation in the Main Street program, the applicant will be awarded 1 point. Points will only be awarded for every two consecutive years and will not be broken into half points for increments other than two-year increments. If a city leaves the Main Street program and then returns at a later date, "continuous participation" will be calculated from the date that they returned to the program. Applicants will receive the maximum amount of points if they have participated in the program for 10 continuous years. [~~Have the Main Street manager and the Main Street board members completed the minimum amount of annual training required in your Main Street contract? For this category the points breakdown is as follows:~~]

~~*(i)* Main Street manager completed training--3 points~~]

~~*(ii)* Board completed training--2 points~~]

(H) Texas Capital Fund Grant Training--(5 points). Has a city representative attended a Texas Capital Fund Main Street Improvements grant training workshop? At least one training workshop is held prior to each application deadline. List the date attended and the location. If the city is retaining a paid consultant to prepare the application, a city representative will still be required to attend training in order to receive the points in the category.

(3) Applicant (maximum 30 points). There are three [~~four~~] applicant scoring categories each worth 5 to 10 points.

[~~(A) Applicant is recognized as a National Main Street city--(5 points)~~]

(A) [~~(B)~~] Minority Hiring (maximum 10 [~~5~~] points). Measures applicant's hiring practices. Percentage of minorities presently employed by the applicant divided by the percentage of minority residents within the local community. Score 10 points if the applicant's minority employment rate is equal to or greater than the applicant's community minority rate. [~~(In the event that the following conditions apply: (1) The applicant has seven or fewer non-seasonal, full-time employees; (2) 5% or more of the applicant's population base is living in group quarters or institutions--the applicant is assigned the average score on this factor or the actual score, whichever is higher.)~~]

(B) [~~(C)~~] Leverage (maximum 10 points). A 10% [~~20%~~] cash match is required for the grant. Additional points will be given for additional matching funds. 10% additional match equals 5

points. 20% additional match equals 10 points. The additional match can be cash and in-kind.

(C) [~~(D)~~] Main Street Standing [~~Reinvestment Statistics~~] (maximum 10 points). If the Main Street program received National Recognition the prior year, 10 points will be awarded. [~~Based on private reinvestment in the Main Street area per capita per year in the program. One point is given for each $10 of reinvestment per capita. If over $100 per capita, then the applicant receives the maximum 10 points.~~]

(j) Threshold criteria for the main street program. In order for its application to be considered, an applicant must meet the requirements of either paragraph (1) or (2) and paragraph (3) of this subsection.

(1) The national objective of aiding in the prevention or elimination of slum or blight [~~Slum or Blight~~] on a spot basis. To show how this objective will be met, the applicant must:

(A) - (B) (No change.)

(2) (No change.)

(3) Main street designation. The applicant must be designated by the THC as a Main Street City prior to submitting a TCF application for main street improvements and must remain a participating city for the duration of the award/contract.

(k) Application process for the downtown revitalization program. The TDA will only accept applications during the months identified in the program guidelines. Applications are reviewed after they have been competitively scored. Staff makes recommendation for award to TDA Commissioner or the Commissioner's designee [~~executive director~~]. TDA Commissioner [~~executive director~~] makes the final decision. The application and selection procedures consist of the following steps:

(1) - (4) (No change.)

(l) Scoring criteria for downtown revitalization program. There are a total of 100 points.

(1) In the event of a tie score and insufficient funds to approve all applications, the following tie breaker criteria will be used.

(A) The tying applications are ranked from lowest to highest based on applicant's most recently available annual county poverty rate, as provided in Appendix A of the application [~~poverty rate stated on the score sheet~~]. Thus, preference is given to the applicant with the higher poverty rate.

(B) If a tie still exists after applying the first criteria then applications are ranked from lowest to highest based on the most recently available, quarterly, city unemployment rate provided by the Texas Workforce Commission [~~unemployment rate stated on the score sheet~~]. Thus, preference is then given to the applicant with the higher unemployment rate.

(2) Maximum 100 points.

(A) Unemployment (maximum 10 points). Five points awarded if the applicant's unemployment rate (for cities, the most recently available quarterly city rate will be used[~~; for counties, the most recently available quarterly county or census tract rate, for where the business site is located, whichever is higher, will be used~~]) is higher than the state rate, indicating that the city [~~community~~] is economically below the state average. Ten points awarded if the applicant's most recently available quarterly unemployment rate is 1.5% over the state rate.

(B) - (D) (No change.)

(E) Community Population (maximum 10 points). Points are awarded to applying cities with populations of 5,050 or less, using 2000 census data. Score 5 points if the city is located in a county with a population of 35,000 or less; and score 5 additional points if the population of the city is less than 5,050. Community population figures are net of the population held in adult or juvenile correctional institutions, as shown by the 2000 census data.

(F) Community Income (maximum 10 points). Ten points awarded to communities that have a low and moderate income level for a 4 person household that is in the bottom 90% of all county level 4 person low and moderate income levels, as provided in Appendix D of the application.

(G) (No change.)

(H) Minority Hiring (maximum 10 points). Measures applicant's hiring practices. Award 5 points if the city's minority employment rate is equal to or greater than the community minority percentages rate. Award 10 points if the city's minority employment rate is equal to or greater than 125% of the community minority percentage rate or in cities where the minority population is 80% or greater, the applicant must employ 95% minorities.

(I) (No change.)

(J) Sidewalks and [~~Sidewalks/~~]ADA Compliance (10 points). Points awarded if a [~~A~~] minimum of 70% of the requested funds will [~~must~~] be used for sidewalk and/or ADA compliance activities. [~~sidewalk/ADA compliance.~~]

(m) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 16, 2005.

TRD-200501178
Charles S. Stone
Executive Director
Office of Rural Community Affairs
Earliest possible date of adoption: May 1, 2005
For further information, please call: (512) 936-6710

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 73. ELECTRICIANS

16 TAC §73.100

The Texas Department of Licensing and Regulation ("Department") proposes an amendment to an existing rule at 16 Texas Administrative Code, §73.100 concerning technical requirements in the electricians licensing program.

The proposed rule amendment will adopt the 2005 version of the National Electrical Code. This rule is necessary to comply with the provisions of Occupations Code, §1305.101(a)(2) which requires the Commission to adopt the new version of the code as it is revised every three years.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendment is in effect

there will be no cost to state or local government as a result of enforcing or administering the amendment.

Mr. Kuntz also has determined that for each year of the first five-year period the amendment is in effect, the public benefit will be that the most recent Code is adopted.

There will be no effect on small or micro-businesses as a result of the proposed amendment. There are no anticipated economic costs to persons who are required to comply with the rule as amended.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile 512/475-3032, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department and Texas Occupations Code, Chapter 1305, §1305.101(a)(2).

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1305. No other statutes, articles, or codes are affected by the proposal.

§73.100. Technical Requirements.

Effective July 1, 2005 [~~September 1, 2004~~] the Department adopts the National Electrical Code, 2005 [~~2002~~] Edition as it existed August 5, 2004 [~~2, 2001~~] as adopted by the National Fire Protection Association, Inc.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2005.

TRD-200501225
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: May 1, 2005
For further information, please call: (512) 463-7348

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1005

(Editor's Note: In accordance with Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1005 is not included in the print version of the Texas Register. The figure is available in the on-line issue of the April 1, 2005, issue of the Texas Register.)

The Texas Education Agency (TEA) proposes new §97.1005, concerning accountability and performance monitoring. The proposed new §97.1005 would describe the Performance-Based Monitoring Analysis System (PBMAS) and adopt applicable excerpts of the PBMAS 2004-2005 Manual, dated December 14, 2004.

House Bill 3459, 78th Texas Legislature, 2003, added Texas Education Code (TEC), §7.027, limiting compliance monitoring done by the TEA to that required to ensure school district and charter school compliance with federal law and regulations; financial accountability, including compliance with grant requirements; and data integrity for purposes of the Public Education Information Management System (PEIMS) and accountability under TEC, Chapter 39. The intent of this change was to limit and redirect monitoring efforts. To meet this requirement, the TEA developed the PBMAS, which is used in conjunction with other evaluation systems, to monitor performance and program effectiveness of special programs in school districts and charter schools. TEA legal counsel has determined that the commissioner of education should take formal rulemaking action to place into the *Texas Administrative Code* procedures related to the PBMAS. The intention is to annually update the rule to incorporate provisions for the most recent PBMAS manual.

The proposed new 19 TAC §97.1005 would describe the purpose of the PBMAS and manner in which school district and charter school performance will be reported. The proposed new rule would also adopt excerpts of the PBMAS 2004-2005 Manual that describe specific criteria and calculations that will be used to assign performance levels. The commissioner would establish specific criteria and calculations annually and communicate that information to school districts and charter schools. The proposal would establish in rule the procedures for the PBMAS. Applicable procedures would be adopted each year as annual versions of the PBMAS manual are published.

Criss Cloudt, associate commissioner for accountability and data quality, has determined that for the first five- year period the new section is in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the new section.

Dr. Cloudt has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the section will be to inform the public of the procedures for the PBMAS by including this rule in the *Texas Administrative Code*. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed new section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code, §7.027, which authorizes the agency to monitor as necessary to ensure school district and charter school compliance with state and federal law and regulations.

The new section implements the Texas Education Code, §7.027.

§97.1005. Performance-Based Monitoring Analysis System.

(a) In accordance with Texas Education Code, §7.027(a), the purpose of the Performance-Based Monitoring Analysis System (PBMAS) is to report annually on the performance of school districts and charter schools in selected program areas: bilingual education/English as a Second Language, career and technology education, special education, and certain Title programs under the federal No Child Left Behind Act. The performance of a school district or charter school is reported through indicators of student performance and program effectiveness and corresponding performance levels established by the commissioner of education.

(b) The assignment of performance levels for school districts and charter schools in the 2004-2005 PBMAS is based on specific criteria and calculations, which are described in an excerpted section of the PBMAS 2004-2005 Manual provided in this subsection.
Figure: 19 TAC §97.1005(b)

(c) The specific criteria and calculations used in the PBMAS are established annually by the commissioner of education and communicated to all school districts and charter schools.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 14, 2005.

TRD-200501139
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: May 1, 2005
For further information, please call: (512) 475-1497

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

DIVISION 3. FORMAL ACTION BY THE BOARD

31 TAC §363.33

The Texas Water Development Board (board) proposes amendments to 31 TAC §363.33, concerning the Interest Rates for Loans and Purchase of Board's Interest in State Participation Projects. These amendments are proposed to allow the board to set a unique interest rate for a loan out of the Texas Water Development Funds and to restructure the paragraph relating to setting the rate for such loans for clarification.

Section 363.33(a)(2) of the board rules sets the lending rate for a loan from the Texas Water Development Funds. The proposed amendments to §363.33(a)(2) include proposed new subparagraph (D) to allow the board to set a lending rate for a loan out of the Texas Water Development Funds that is different than the rate set by the lending rate procedure in order to facilitate the restructuring of an existing board loan that is in imminent risk of default as determined by the board. In such a situation, the board would refinance the existing debt of a political subdivision with a new loan from the Texas Water Development Funds with an interest rate that maximizes the ability of the political subdivision to make payments. For example, the new loan may utilize a 0% or 1% interest rate, a rate that could not be achieved through the current lending rate procedure. The proposed addition is not intended to provide a new source of low interest financing for water and wastewater projects. Rather, the proposed addition is intended to provide the board with a vehicle to assist to political subdivisions to prevent defaults of loans with the board.

The amendments are also proposed to §363.33(a)(2) to modify the lettering of the subparagraphs in §363.33(a)(2) to provide clarification of the procedures under this section.

James LeBas, Chief Financial Officer, has determined that for the first five-year period the amendments are in effect that state government will benefit from an indeterminate gain from avoidance of loan defaults and local government will benefit from an undetermined amount from avoidance of costs associated with defaults as a result of enforcement and administration of the amended section.

Mr. LeBas has also determined that for the first five years the amendments, as proposed, are in effect the public benefit anticipated as a result of enforcing the amended section will be to provide flexibility to the board to address loans from political subdivisions which are in an imminent risk of default and to prevent the default of such board loans. Mr. LeBas has determined there will not be economic costs to small businesses or individuals required to comply with the amendments as proposed.

Comments on the proposal will be accepted for 30 days following publication and may be submitted to Srin Surapanani, Attorney, General Counsel Office, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by e-mail to srin.surapanani@twdb.state.tx.us or by fax at (512) 463-5580.

The amendments are proposed under the authority of the Texas Water Code, §6.101.

The statutory provisions affected by the proposed amendments are Texas Water Code, Chapter 17, Subchapter E.

§363.33. Interest Rates for Loans and Purchase of Board's Interest in State Participation Projects.

(a) Procedure and method for setting fixed interest rates.

(1) (No change.)

(2) For loans from the Texas Water Development Fund and Texas Water Development Fund II or for lending rates for purchases of the board's interest in state participation projects, the executive administrator will set the interest rate at:

(A) the higher of:

(i) [~~(A)~~] the rates established in the lending rate scale adopted by the board under subsection (b) of this section; or

(ii) [~~(B)~~] either:

(I) [~~(i)~~] for tax-exempt issues, the rates established by the "A" scale of the Delphis Hanover Corporation Range of Yield Curve Scales (Delphis A scale); or

(II) [~~(ii)~~] for taxable issues, the Delphis A scale adjusted to take into consideration the difference between taxable and

tax-exempt rates in the market, as determined by the executive administrator; [~~or~~]

(B) [~~(C)~~)] for loans with a maturity less than 15 years, if the interest rates calculated in subparagraph (A) of this paragraph results in a true interest cost that is less than the minimum true interest cost of the lending rate scale established under subsection (b) of this section for those funds, at a rate increased to match the minimum true interest costs so the board may recover all costs attributed to the bonds sold by the board; [~~.~~]

(C) [~~(D)~~)] for loans funded by the board with proceeds of bonds, the interest of [~~for~~] which is intended to be tax exempt for purposes of federal tax law, the executive administrator will limit the interest set pursuant to this subsection at no higher than the rate permitted under federal tax law to maintain the tax exemption for the interest on the board's bond; and[~~.~~]

(D) the board may establish different interest rates for loans under this paragraph in order to facilitate a restructuring of an existing board loan that is in imminent risk of default as determined by the board.

(3) (No change.)

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 15, 2005.

TRD-200501160
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: May 17, 2005
For further information, please call: (512) 475-2052

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 87. TREATMENT

SUBCHAPTER A. PROGRAM PLANNING

The Texas Youth Commission (the commission) proposes the repeal of §87.3, concerning Resocialization Program. The rule proposed for repeal is proposed for re-adoption as new §87.2.

The commission simultaneously proposes new §87.2 and §87.3. The new §87.2 is necessary in order to allow for new §87.3 to be proposed in the correct numbering sequence. The new §87.3 will outline specific criteria in the areas of Academic/Workforce Development (A), Behavior (B) and Correctional Therapy (C) in which a youth must demonstrate competency to be promoted and to identify how the process of assessment is conducted. A youth can earn release/transition from high and medium restriction placement by progressing through the Phases system in the commission's Resocialization Program.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Neil Nichols, General Counsel, has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections is to hold youth accountable to demonstrate a change in behavior that can be sustained in the community. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these rules.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

37 TAC §87.2, §87.3

The new sections are proposed under the Human Resources Code, §61.076, which provides the commission with the authority to require youth in its care to participate in academic and correctional training and activities.

The proposed rules affects the Human Resources Code, §61.034.

§87.2. Resocialization Program.

(a) Purpose. The purpose of this rule is to identify the agency's philosophy and approach to rehabilitation of juvenile delinquents in order to reduce future delinquent behavior and increase accountability of the youth and programs.

(b) Explanation of Terms Used.

(1) Resocialization program--the basic program implemented in all Texas Youth Commission (TYC) facilities.

(2) Phases of resocialization--five competency based phases in the resocialization program used to determine a youth's progress in the program.

(3) Phases checklist--standardized list of measurements used at every program for individual determination of phase completion.

(c) Each TYC facility will maintain a program of resocialization consisting of four cornerstones: correctional therapy, education, discipline and work.

(d) All aspects of the TYC resocialization program will be competency based with clearly defined performance expectations. Individual progress will be measured monthly and be based on all identified treatment needs and strengths.

(e) Phases of resocialization are progressive. Youth will be assessed by a treatment team at each residential placement for the appropriate phase. Parole youth will be assessed by the assigned parole officer. Higher phases are associated with increased expectations of responsibility and decreased need for direct staff supervision.

(f) TYC facilities shall maintain a structured 16-hour day for all youth. During each day, the youth will work on components of the resocialization program.

(g) TYC facilities shall provide for and youth will participate in a structured, individually appropriate educational program or equivalent.

(h) TYC facilities shall provide and eligible youth may participate in work experiences.

(i) TYC facilities shall provide and youth will participate in regular physical training programs.

(j) TYC facilities shall provide and youth will participate in correctional therapy. Therapy will consist of three types of required group sessions for all youth. Participation in behavior, core intervention, and life skills groups will be required.

(k) Staff responsible for provision of resocialization service delivery will receive appropriate training and certification.

§87.3. Resocialization Phase Requirement and Assessment.

(a) Purpose. A TYC youth earns release/transition from high and medium restriction placements by progressing through a Phases system that has been developed to measure progress in the Resocialization program. The purpose of this rule is to outline the specific criteria in the areas of Academic/Workforce Development, Behavior and Correctional Therapy in which a youth must demonstrate competency to be promoted and to identify how the process of assessment is conducted on a monthly basis.

(b) Applicability. Provisions of this policy do not apply to youth in contract care programs that are not required to provide Resocialization treatment.

(c) Explanation of Terms Used.

(1) Academic/Workforce Development (A)--Youth are assessed on their ability to participate in programs related to academic and vocational skills development and participation in actual work. This may occur from the elementary school level to the college level. Youth engaged in work training and/or paid employment are assessed in this area.

(2) Behavior (B)--Youth are assessed on their ability to manage their behavior and follow a set of established and reasonable rules in accordance with §95.1 of this title (relating to Discipline System Overview) and §95.3 of this title (relating to Rules of Conduct).

(3) Correctional Therapy (C)--Youth are assessed on their progress through a treatment program that requires they develop an understanding of the motivators of their delinquent behaviors, and develop alternative non-delinquent behaviors and values as well as a detailed plan to succeed in the community after release.

(4) Indicators--Each main and sub-objectives is broken down into several smaller parts that clarify and define the objective. When all indicators are mastered, the objective is considered complete for that phase. There are indicators in the Academic/Workforce Development and Correctional Therapy areas.

(5) Main Objective--Specific objectives related to the most important concept or skill necessary to complete a phase in the Academic/Workforce Development and Correctional Therapy areas. In the Academic/Workforce Development area there may be two (2) main objectives per phase if the youth is in school and employed at a job. In Correctional Therapy there is one main objective per phase.

(6) Phase Assessment Team (PAT)--The PAT is responsible for conducting the youth's phase assessment on a monthly basis. It includes staff members who are knowledgeable of the youth's performance. The chief local administrator appoints the PAT members. The members must include a juvenile corrections officer (JCO) supervisor, an education representative and the youth's primary service worker (PSW).

(7) Phases--The measure of progress in each of the three areas beginning with phase 0 and ending with phase 4 in the A, B, and C areas as defined above. Phases are progressive and competency based. Youth may progress in each area at different rates. Phase related privileges are calculated based upon the lowest earned phase in the three (3) areas. Increases in phase are associated with increases in privileges. A completed phase is defined as completion of all main and sub objectives in the Academic/Workforce Development, Behavior and Correctional Therapy areas.

(8) Qualified Professional Staff--a qualified professional staff is considered a psychologist, psychiatrist or other licensed health care professional and an educational diagnostician. Other educational professional staff can be considered as a qualified professional staff only with the approval from the director of clinical services.

(9) Remediate--After earning an indicator(s) for specific identified Academic/Workforce Development or Correctional Therapy objectives a youth will be expected to continue to demonstrate competence in that area over time. Youth who do not continue to demonstrate competency on specific indicators may be placed on remediation. If placed on remediation, youth must meet the criteria for that indicator during the subsequent monthly assessment period to avoid losing credit for that indicator and possible demotion. Youth on remediation will have specific objectives incorporated in their Individual Case Plan (ICP) to assist them in meeting the specific indicator criteria.

(10) Special Circumstances--Special conditions allow the PAT to exercise discretion and to consider individual circumstances when making decisions in the Behavior area. These circumstances may be applied when the number of documented rule violations in a monthly period would require a youth be retained or demoted in the Behavior area. By using special circumstances, the PAT would allow a youth to be retained or promoted instead of demoted because of specific mitigating circumstances. There are five (5) special circumstances that may be applied at the PAT's monthly meeting. The PAT may use special circumstances 1-4, if all members of the team agree. The fifth special circumstance is reserved for qualified professional staff and allows retention or promotion based upon clinical assessment of the needs of the youth. This special circumstance must be used if recommended by the qualified professional staff and does not require the consensus of the PAT. Special circumstances are used only for the Behavior area and may be used when the PAT determines that the youth has:

(A) made efforts to improve, as indicated by a decrease in the frequency and/or severity of rule violations during the current assessment period;

(B) demonstrated the use of skills in most areas, as indicated by the occurrence of rule violations only in isolated areas;

(C) attempted to change problem behaviors, as indicated by the youth's responsiveness to staff interventions in Behavior Groups, huddle-ups, disciplinary actions and the like; and

(D) contributed to a positive culture despite the rule violations, as indicated by the youth's doing more than expected in other areas, such as making amends, helping staff and other youth, being receptive to feedback. The fifth special circumstance is applied when it is determined by a qualified professional staff that the youth: Acted under conditions that make it relatively more difficult for the youth to meet the criteria, as indicated by the existence of emotional disturbance, impulse control disorder, learning disability, attention deficit disorder, language barrier, immaturity, but only when the youth has complied with specific treatment recommendations. This circumstance may also be used to mitigate the effect of a Category I rule violation under certain circumstances.

(11) Sub-Objectives--Specific objectives that contribute to or broaden the understanding of the main objectives for a given phase. There may be several sub-objectives associated with a main objective.

There are sub-objectives in the Academic/Workforce Development and Correctional Therapy areas.

(d) Phase Requirements for Promotion.

(1) Academic/Workforce Development. To successfully complete phases 1-4, the youth is required to complete the following main and sub-objectives during each monthly phase assessment period.

(A) Main Objective.

(i) complete all required tests when scheduled. This includes, but is not limited to, completing the Test of Adult Basic Education (TABE) pre-test, Workforce/Career & Technology aptitude and interest surveys, other assessments appropriate for students needing special education or English as a second language (ESL) and appropriate General Educational Development (GED) tests based upon youth's age and ability. Takes other classroom tests or quizzes as assigned by the by the classroom teacher;

(ii) follow all test administration instructions as defined or interpreted by the test administrator;

(iii) youth's performance on all tests must be consistent with expectations as determined by teachers and the educational diagnostician or an appropriate educational staff. Expected performance is based upon comparison with prior test results and current functioning as observed by teachers and the educational diagnostician or an appropriate educational staff; and

(iv) youth employed in compensated work programs must also perform all expected job duties and work objectives as defined by the work supervisor, demonstrate positive work behavior on the job by following work and break schedules, following supervisors instructions and working as part of a team when necessary, make reasonable efforts to learn job requirements and require decreasing direct work supervision over time.

(B) Sub-Objectives.

(i) shows progress on all daily Academic/Workforce Development tasks and assignments by staying on task in all classes a minimum of 70% of the time;

(ii) shows progress toward Academic/Workforce Development curriculum (elementary or secondary TEKS, GED, CATE, college or work daily assignments) by mastering specific curriculum objectives so that the youth will achieve educational six (6) week objectives; and

(iii) achieves passing grades of at least 70% on all classroom assignments based upon each classroom teacher's judgment of the youth's individual ability.

(2) Behavior.

(A) To successfully complete Behavior phases 1-4, the youth is required to have no Category I rule violations pursuant to §95.3 of this title and have no more than the following number of Category II rule violations pursuant to §95.3 of this title, during each monthly assessment period:

(i) Phase 1--no more than seven (7) Category II rule violations if in a high restriction placement and no more than six (6) Category II rule violations if in a medium restriction facility.

(ii) Phase 2--no more than five (5) Category II rule violations if in a high restriction placement and no more than four (4) Category II rule violations if in a medium restriction facility.

(iii) Phase 3--no more than three (3) Category II rule violations if in a high restriction placement and no more than two (2) Category II rule violations if in a medium restriction facility.

(iv) Phase 4--no more than one Category II rule violations if in a high restriction placement and no more than one Category II rule violations if in a medium restriction facility.

(B) Youth may be retained or promoted in Behavior phase, with an excessive number of Category II rule violations, if the PAT elects to apply special circumstances during the monthly PAT meeting.

(3) Correctional Therapy. Requirements for completion of Correctional Therapy phases vary with each phase.

(A) Phase 1. To successfully complete this phase, during any monthly assessment period, the youth is required to complete all assigned exercises in a Resocialization Workbook and all of the following main objective and sub-objectives:

(i) Main Objective. The youth will:

(I) discuss from memory in Core Group the definition of a Life Story and state why it is a required part of treatment;

(II) discuss from memory in Core Group the definition of the Offense Cycle and state how it can be used to prevent delinquent behaviors;

(III) discuss from memory in Core Group each the definition of a Success Plan and state what changes need to be made to be successful and why it makes sense to plan for the future; and

(IV) recite from memory the major program rules in Core Group and state the reasons for having rules.

(ii) Sub-Objectives.

(I) Thinking Errors--defines the nine (9) "Thinking Errors" in Core Group and states how Thinking Errors are associated with delinquent behaviors.

(II) Empathy

(-a-) Defines "Empathy" in Core Group.

(-b-) Identifies and uses personal feeling words.

(III) Values

(-a-) Defines the meaning of "Values" in Core Group.

(-b-) Gives personal examples of personal values.

(IV) Layout--in Core Group will present, from memory, the Basic Layout; explains the three (3) reasons for completing a Layout.

(V) Positive Skills

(-a-) reports personal strengths and weaknesses (in Behavior Group);

(-b-) evaluates the costs and benefits of decisions made (in Core Group);

(-c-) identifies feelings related to receiving staff feedback and disagreements in Core Group;

(-d-) discusses how staff and peer feedback can be helpful and will; and

(-e-) identifies a skill that would help them address a problem area.

(B) Phase 2. To successfully complete this phase, during any monthly phase assessment period, the youth is required to complete all assigned exercises in a Resocialization Workbook and all of the following main objective and sub-objectives:

(i) Main Objective.

(I) presents from memory to the Core Group their Life Story that: Accurately describes significant events and feelings from birth through commitment to the Texas Youth Commission (TYC);

(II) uses feeling words to describe reactions to situations involving other youth, victims, family members and others;

(III) identifies significant unmet needs and how these needs developed; and

(IV) states the connection between unmet needs and how they related to delinquent and criminal patterns of behavior.

(ii) Sub-Objectives.

(I) Thinking Errors

(-a-) describes in Core Group, how Thinking Errors were used to protect themselves from unpleasant feelings while growing up; and

(-b-) identifies the ongoing use of Thinking Errors in both self and others on a daily basis by appropriately confronting others and accepting appropriate confrontation from others.

(II) Empathy

(-a-) uses feeling words in Core Group to describe reactions to situations occurring in the Life Story as well as in day to day functions; and

(-b-) identifies and discusses in Core Group the thoughts and feelings of others mentioned in the presentation of the Life Story and in day to activity.

(III) Values--in Core Group and during the presentation of the Life Story will identify how values were learned.

(IV) Layout

(-a-) in Core Group will present, from memory a Life Story Layout that includes the Basic Layout plus specific historical information from the Life Story; and

(-b-) will explain to Core Group why the Life Story information is added.

(V) Positive Skills

(-a-) will identify strengths and weaknesses in Behavior Group and describe how they relate to success;

(-b-) will identify the cost and benefits of specific decisions made in their lives and discuss why considering costs and benefits is important in Core Group;

(-c-) will Discuss how positive skills assist in handling feedback and disagreements in Core Group; and

(-d-) will identify two (2) positive skills to be practiced during the following month and presented for discussion in Behavior Group.

(C) Phase 3. To successfully complete this phase, during any monthly phase assessment period, the youth is required to complete all assigned exercises in a Resocialization Workbook and all of the following main objective and sub-objectives:

(i) Main Objective.

(I) Present from memory to Core Group, a seven (7) step Offense Cycle for the committing and/or classifying offense. The Offense Cycle is presented from memory and meets specific criteria as follows:

(-a-) includes all seven (7) steps in the Offense Cycle, accurately stated, adequately detailed, and in the correct sequence;

(-b-) includes an unmet need from the Life Story;

(-c-) includes an accurate critical situation that is connected to the unmet need;

(-d-) states the thoughts and feelings involved in the internal reaction step;

(-e-) states the choices that could have been made in place of the offense;

(-f-) states actions, thoughts, and feelings involved in the preparing to offend step;

(-g-) describes the committing and/or classifying offense in detail; and

(-h-) states actions, thoughts, and feelings involved in the avoiding consequences step.

(II) After completing an Offense Cycle for the committing/classifying offense, the youth must construct at least two (2) Offense Cycles for recent behavioral problems. The Offense Cycle must:

(-a-) identify a specific problem;

(-b-) identify where in the cycle the youth might have interrupted the cycle;

(-c-) identify specific strategies or positive skills that might have been used to interrupt the cycle; and

(-d-) include a plan for using these strategies or positive skills when faced with similar high-risk situations or "trigger" in the future.

(III) After completing Offense Cycles on actual ongoing behavior problems, the youth will demonstrate an ongoing ability to interrupt the cycle to avoid the problem by:

(-a-) identifying in Core Group, at least five (5) occasions where the cycle was interrupted before the negative behavior occurred;

(-b-) identifying in Core Group at what step the cycle was interrupted;

(-c-) describe the positive skills or strategies that were used to interrupt the cycle; and

(-d-) respond appropriately to confrontation or feedback from the Core Group or staff.

(ii) Sub-Objectives.

(I) Thinking Errors

(-a-) state in Core Group, the thinking error(s) used in each step of the Offense Cycle; and

(-b-) how the use of each thinking error allowed the avoidance of responsibility for the behavior or avoidance of unpleasant feelings associated with the behavior.

(II) Empathy

(-a-) discusses in Core Group, feelings and thoughts and long and the short-term effects of the offense from the victim's perspective;

(-b-) discusses in Core Group, the impact of the offense on extended victims, including the youth's own family; and

(-c-) discuss in Core Group, how empathy might prevent similar behavior in the future.

(III) Values

(-a-) discuss in Core Group, how personal values will be used to interrupt future Offense Cycles; and

(-b-) discuss in Core Group, how values were used to help interrupt, at least, two (2) Offense Cycles in the past month.

(IV) Layout

(-a-) in Core Group will present, from memory, an Offense Cycle layout by adding victim the victim information to the Life Story Layout; and

(-b-) modifies the layout based upon feedback from the group and explains to the group why the victim information is added to the Layout.

(V) Positive Skills

(-a-) in Behavior Group, will identify strengths and weaknesses and describe how they relate to success;

(-b-) in Core Group, will identify the costs and benefits of the committing offense to the youth, his/her family, the victim, the victims family, the community and him/herself;

(-c-) makes decisions based upon the costs and benefits for behaviors to the youth, peers and family;

(-d-) discuss in Core Group feelings and reactions to feedback and disagreements in the prior month and how Positive Skills were used to handle the feelings; and

(-e-) identifies three (3) positive skills to be practiced during the following month and presented for discussion in Behavior Group.

(D) Phase 4. To successfully complete this phase, during any monthly phase assessment period, the youth is required to complete all assigned exercises in a Resocialization Workbook and all of the following main objective and sub-objectives:

(i) Main Objective. Develop and present from memory to Core Group, a Success Plan that includes:

(I) individualized and realistic education, family, social, personal and work goals that: reflect the knowledge, skills, and abilities of the youth, and that link to specific and relevant unmet needs, support values in pro-social ways; and address any ongoing psychiatric, medical, or other specialized treatment needs);

(II) a set of detailed, realistic specific plans to meet each goal that includes multiple steps to reach the goal and identifies specific resources available in the community; and

(III) a description of barriers to success that includes specific People, Places, Situations and Feelings, that are likely to be encountered, and a plan to avoid these situations if possible or specific positive skills to be used if they cannot be avoided.

(ii) Sub-Objectives.

(I) Thinking Errors

(-a-) youth will self identify an process in Core Group any Thinking Errors;

(-b-) youth explains how the use of Thinking Errors may lead to re-offending; and

(-c-) youth will develop a plan to handle situations without the use of Thinking Errors.

(II) Empathy

(-a-) demonstrates care and concern for others by providing positive feedback to other youth in a positive manner;

(-b-) identifies and confronts in an appropriate manner the Thinking Errors used by other youth;

(-c-) accepts confrontation and feedback from other youth and staff;

(-d-) makes amends for behaviors that victimize others by stating how the victim felt as a result of the youth's behavior, apologizing and making restitution when possible, stating how to prevent the victimizing behavior in the future; and making a commitment and plan to stop the victimizing behavior; and

(-e-) states and gives examples of subtle ways of victimizing others, and state sways the youth has made amends for it.

(III) Values

(-a-) states and give examples in Core Group of how values fit into the Success Plan and how they support success in the community;

(-b-) demonstrates on a daily basis how pro-social values guide behavior on the campus; and

(-c-) participates in community service if required by the facility.

(IV) Layout

(-a-) in Core Group, will present from memory a Success Plan Layout by adding Success Plan information to the Offense Cycle Layout;

(-b-) modifies the layout based upon feedback from the group; and

(-c-) explains to the Core Group why the success planning information is added to the Layout.

(V) Positive Skills

(-a-) youth reviews in Behavior Group how individual strengths and weaknesses impact the success of his/her transition;

(-b-) youth reviews in Core Group, the costs and benefits to transition of daily decisions;

(-c-) youth identifies how personal reactions to situations can be a barrier to success; and

(-d-) selects and practices four (4) skills designed to improve success after transition.

(e) Phase Assessment Team. Members of the PAT make phase decisions in their respective areas of expertise. The PAT confirms awarding of phases C3 and C4 by reviewing progress and interviewing the youth. The PSW serves as the PAT facilitator. Level II hearing examiners may make decisions regarding demotion in the area of Behavior in accordance with provisions of this policy and §95.55 of this title. The PAT will address and make treatment recommendations that also reflect:

(1) specialized treatment needs of the youth to include chemical dependency, mental health, cognitive, aggressive, sexual behavior and language proficiency regardless of where they are placed;

(2) any other relevant specialized needs not identified specifically in this policy; and

(3) any adaptations to the standard Resocialization curriculum based upon the presence of special needs.

(f) Frequency of Phase Assessment.

(1) The phase assessment is conducted on a monthly basis after the initial placement from the Marlin Orientation and Assessment Unit (MOAU). A PAT is held monthly defined as between 28 and 35 days from the prior PAT. However, should a youth be placed in a Behavior Management Program (BMP) during an assessment period, in accordance with provisions of §95.17 of this title (relating to a Behavior Management Program) phase assessment is suspended during the time a youth is on the BMP stages 1-4. A new PAT is conducted within 30 days following the youth's release from the BMP.

(2) Youth reclassified or recommitted as a result of a Level I hearing may be reassessed at any phase in the Academic/Workforce

Development, Behavior or Correctional Therapy areas within 30 days of their recommitment/reclassification.

(g) Documentation and Youth Interview. A phase assessment is conducted on the basis of documentation related to the youth's performance during the previous 30-day period. The PAT conducts a face-to-face interview with the youth:

(1) within 30 days of admission to a new program;

(2) within 30 days of admission to a new dorm;

(3) prior to movement to a less restrictive placement;

(4) upon the request of administration;

(5) prior to release or discharge;

(6) within 30 days of release from a BMP;

(7) if the PAT determines a face-to-face interview is required;

(8) prior to assignment of phase C3; and

(9) prior to assignment of phase C4.

(h) Opportunity to Demonstrate Completion of Requirements.

(1) Phase promotion in the Academic/Workforce Development and the Behavior areas may be completed in a single month. Promotion in the Correctional Therapy area is not designed to be completed in a single month. Completion of requirements in Correctional Therapy is demonstrated primarily through participation in scheduled activities with the youth's caseworker, Core Group and Behavior Group. The phase requirements are generally sequential.

(2) During each monthly assessment period, the youth is provided an equal opportunity, as the youth's behavior warrants, to participate in the scheduled activities needed to progress. With reasonable effort by the youth, the requirements of phase C4 will be completed by the time of the youth's projected date of release under parole supervision. For youth whose minimum length of stay or minimum period of confinement exceeds 12 months, the schedule must provide an opportunity for completion of phase 4 requirements within one year.

(i) Promotion, Retention, Maintenance, and Demotion. Youth may be promoted, demoted, retained or maintained by the PAT in any of the three (3) areas based upon criteria noted below. Youth recommitted to TYC as a result of a Level I hearing may be reassessed at any phase in the A, B and C areas after a one-month evaluation period.

(1) Academic/Workforce Development Phase Assessment Criteria.

(A) Promote--A youth is promoted to the next phase in the Academic/Workforce Development area when the youth meets all indicators that are related to the main objective and the sub-objectives.

(B) Retain--A youth is retained in the Academic/Workforce Development area if they do not continue to meet all of the indicators in the main objective and the sub-objectives. Youth will receive special attention to address deficits identified in the subsequent 30-day period.

(C) Maintain--A youth is maintained at phase A4 if the youth continues to meet the criteria for that phase. A youth is maintained in lieu of promotion when he/she is at the highest phase possible in that area.

(D) Demote--A youth is demoted to the next lower phase in the Academic/ Workforce Development area when the youth fails to meet the requirements of the main objective and the sub-objectives after a 30-day period of remediation.

(2) Behavior Phase Assessment Criteria.

(A) Promote--A youth is promoted to the next phase in the Behavior area when the youth meets all requirements or when a sufficient number of category II rule violations are excused for special circumstances. Under unusual circumstances a youth may be promoted with a Category I rule violation if excused by Special Circumstance number 5.

(B) Retain--A youth is retained in the Behavior area if they do not meet the criteria for promotion or for demotion based upon the number of Category II rule violations obtained during the 30-day period. Youth may also be retained if they have a sufficient number of Category II rule violations to warrant demotion, but special circumstances are applied to retain at that phase. Under unusual circumstances a youth may be retained with a Category I rule violation if excused by Special Circumstance number 5.

(C) Maintain--A youth is maintained at phase B4 if the youth continues to meet the criteria for that phase. A youth is maintained in lieu of promotion when he/she is at the highest phase possible in that area.

(D) Demote--A youth is demoted to the next lower phase in the Behavior area when the youth fails to meet all requirements and special circumstances either do not exist or are insufficient to excuse the rule violations. A youth may be demoted more than one phase as a result of a disciplinary action at a Level I or Level II Hearing, see §95.55 of this title (relating to Level II Hearing Procedure). A youth who has been demoted as a result of a disciplinary action during the assessment period may not be demoted again at the phase assessment based on the same misconduct.

(3) Correctional Therapy

(A) Promote--A youth is promoted to the next phase in the Correctional Therapy area when the youth meets all indicators that are related to the main objective and the sub-objectives for the higher phase.

(B) Retain--A youth is retained in the Correctional Therapy area if they have not met all indicators for the next higher phase during the assessment period.

(C) Maintain--A youth is maintained at phase C4 if the youth continues to meet the criteria for that phase. A youth is maintained in lieu of promotion when he/she is at the highest phase possible in that area.

(D) Demote--A youth is demoted to the next lower phase in the Correctional Therapy area when the youth fails to meet the requirements of one or more indicators of the main objective or sub-objectives after a period of remediation as defined in accordance with the explanation of terms used in this policy. However, no youth shall be demoted to a phase lower than C2 based only on a failure to remediate.

(j) Documentation and Youth Appraisal of Results of Phase Assessment. The following activities are required of the PSW after a PAT:

(1) within two (2) working days of the phase assessment, the PSW meets with the youth to report the results of the assessment. The PSW reports the strengths and specific areas needing improvement. If the youth's demotion or failure to progress in an area extends the youth's projected release to parole supervision, the caseworker will notify the youth of a new projected release date that is premised on the youth reasonably applying himself/herself to completion of the requirements;

(2) within seven (7) calendar days, the PSW attempts to contact the youth's family by telephone to share the outcome of the PAT; and

(3) within three (3) working days, the PSW enters the PAT results into automated data entry system.

(k) Development of the Individual Case Plan. The following case planning activities are required of the PSW after a PAT:

(1) within seven (7) calendar days of the PAT, the PSW completes the monthly Individual Case Plan (ICP) for the youth and reviews its content and obtains the youth's signature; and

(2) youth completing phase A2, B2, C3 and who are within 90 days of their minimum length of stay or minimum period of confinement will have a transition ICP initiated. The plan will be developed based upon the youth's individualized risk factors, strengths & needs and TYC classification.

(l) Appeal of Assessment. The youth may appeal the results of a phase assessment, or of the lack of opportunity to demonstrate completion of requirements, by filing a complaint under the complaints resolution procedure according to §93.31 of this title (relating to Complaint Resolution System). The person assigned to respond to the appeal must be a staff member who is not a member of the PAT or a person who has been involved in the youth's current assessment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 17, 2005.

TRD-200501201
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: May 1, 2005
For further information, please call: (512) 424-6301

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37 TAC §87.3

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Youth Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule affects the Human Resources Code, §61.034.

§87.3. Resocialization Program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 17, 2005.

TRD-200501199
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: May 1, 2005
For further information, please call: (512) 424-6301

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CHAPTER 91. PROGRAM SERVICES
SUBCHAPTER D. HEALTH CARE SERVICES

37 TAC §91.87

The Texas Youth Commission (the commission) proposes an amendment to §91.87, Suicide Alert Explanation of Terms. The amended section will include a reference to the recently adopted §97.23 Physical Restraint and use terminology consistent with that section.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the availability of current and accurate agency policy. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule affects the Human Resources Code, §61.034.

§91.87. Suicide Alert Explanation of Terms.

(a) Purpose. The purpose of this rule is to establish explanations of terms used pursuant to [~~(GAP)~~] §91.88 of this title (relating to Suicide Alert for Secure Programs), [~~(GAP)~~] §91.89 of this title (relating to Suicide Alert for Non-Secure Programs), and [~~(GAP)~~] §91.90 of this title (relating to Suicide Alert for Parole) which establish procedures for the identification, assessment, treatment, and protection of youth who may be at risk for suicide.

(b) Explanation of Terms Used.

(1) - (17) (No change.)

(18) Minimum Security Precautions for Secure Programs.

(A) Non-Lethal Suicide Precautions--A youth is admitted to security intake according to [~~(GAP)~~] §97.37 of this title (relating to Security Intake), or protective custody according to [~~(GAP)~~] §97.45 of this title (relating to Protective Custody), and is visually checked once every five (5) minutes by staff. The room is secured by security staff for safety prior to placement and checked for safety every shift or as needed between periods of movement to ensure youth safety. Staff reduces access to potentially dangerous objects (e.g., limited or controlled/supervised access to plastic eating utensils, bed linens), issues suicide safe bedding (e.g. use of suicide blanket). Access to razors is approved by the MHP and visually monitored by staff. Standard suicide precautions are implemented for any youth referred for non-lethal suicide behavior or for a youth who originally engaged in overt suicide

behavior but who has stabilized to the point that a reduction in precaution is indicated. The precautions may be modified, by telephone consultation or following a face-to-face suicide risk assessment, by an MHP.

(B) Overt Suicide Precautions--A youth is admitted to security intake according to [~~(GAP)~~] §97.37 of this title (relating to Security Intake), or protective custody according to [~~(GAP)~~] §97.45 of this title (relating to Protective Custody), or a secure observation area, or the infirmary and is visually checked once every three (3) minutes by staff or, if necessary, placed on one-to-one (1:1) or constant observation. For youth who engage in overt suicide behavior as defined in this policy, staff will:

(i) issue protective clothing (e.g., disposable paper gown, suicide barrel, etc.). Staff verbally instructs youth to put on protective clothing and to remove any undergarment. In accordance with §97.23 of this title (relating to Physical Restraint) [~~(GAP) §97.23 of this title (relating to Use of Force)~~] physical restraint [~~use of force~~] may be initiated, but only as a last resort. Staff must consult with the facility administrator and/or MHP, regarding alternative interventions that do not involve physical restraint [~~use of force~~]. When manual [~~physical~~] or mechanical restraint is employed, at least one (1) staff conducting the restraint must be the same gender as the youth. Staff provides repeated opportunities during the restraint for youth to remove own clothing. If there is no same gender staff available, the youth remains on one-to-one (1:1) observation until such staff is available.

(ii) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 17, 2005.

TRD-200501202
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: May 1, 2005
For further information, please call: (512) 424-6301

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CHAPTER 97. SECURITY AND CONTROL

The Texas Youth Commission (the commission) proposes amendments to §§97.1, 97.27, and 97.75, concerning security and control and peace officers. The amended sections will include a reference to the recently adopted §97.23 Physical Restraint, and §97.1 and §97.27 will no longer include references to recently repealed sections.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the sections will be the availability of current and accurate agency policies. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these rules.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

SUBCHAPTER A. SECURITY AND CONTROL

37 TAC §97.1, §97.27

The amendments are proposed under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rules affect the Human Resources Code, §61.034.

§97.1. Facility Security.

(a) - (b) (No change.)

(c) Weapons are not permitted in any TYC facility or on any facility grounds except as set forth in [~~(GAP)~~] §81.31 of this title (relating to Weapons and Concealed Handguns). Weapons are permitted in the personal residence of staff who live adjacent to the campus.

(d) Chemical agents may be used only to the extent necessary to ensure the safety and welfare of youth and staff in accordance with §97.23 of this title (relating to Physical Restraint). [~~(GAP) §97.25 of this title (relating to Use of Force: Chemical Agent OC).~~]

(e) - (f) (No change.)

§97.27. Riot Control.

(a) (No change.)

(b) Applicability.

(1) (No change.)

(2) See §97.23 of this title (relating to Physical Restraint).[~~Other sections in effect during riot conditions:~~]

[~~(A) (GAP) §97.23 of this title (relating to Use of Force);~~]

[~~(B) (GAP) §97.21 of this title (relating to Approved Restraint Equipment); and~~]

[~~(C) (GAP) §97.25 of this title (relating to Use of Force: Chemical Agent OC).~~]

(c) - (e) (No change.)

(f) Physical Restraint.[~~Use of Force.~~]

(1) Physical Restraint[~~Force~~] may be used in accordance with [~~(GAP)~~] §97.23 of this title [~~(relating to Use of Force), (GAP) §97.21 of this title (relating to Approved Restraint Equipment), and (GAP) §97.25 of this title (relating to Use of Force: Chemical Agent OC) unless specifically stated otherwise in this section~~].

(2) [~~Orthochlorobenzalmalonoitrile (CS), also known as tear gas, may be used only in a riot situation.~~] Oleoresin Capsicum (OC), also known as pepper spray, may be used in a riot and other situations consistent with §97.23 [~~(GAP) §97.25~~] of this title [~~(relating to Use of Force: Chemical Agent OC)~~].

(3) - (4) (No change.)

(g) (No change.)

(h) Approved Riot Equipment and Gear. Staff may act using only equipment approved for use during a riot and only following training in the appropriate procedures and use of such equipment. Approved for use during a riot:

(1) Chemical agent forms are:

(A) canisters of chemical agent[~~agents CS and~~] OC

(B) cartridges of chemical agent[~~agents CS and~~] OC

(C) pepper fog formulation for the pepper fogger (OC)

(2) - (3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 17, 2005.

TRD-200501203
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: May 1, 2005
For further information, please call: (512) 424-6301

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SUBCHAPTER B. PEACE OFFICERS

37 TAC §97.75

The amendment is proposed under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule affects the Human Resources Code, §61.034.

§97.75. Peace Officer: Continuum of Force.

(a) (No change.)

(b) If physical force is required, the apprehension specialist may apply such force in compliance with §97.23 of this title (relating to Physical Restraint). [~~(GAP) §97.23 of this title (relating to Use of Force).~~]

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 17, 2005.

TRD-200501204
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: May 1, 2005
For further information, please call: (512) 424-6301

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CHAPTER 99. GENERAL PROVISIONS
SUBCHAPTER B. YOUTH FUNDS

37 TAC §99.31

The Texas Youth Commission (the commission) proposes an amendment to §99.31, concerning Youth Banking. The amendment to the section will allow 15 days from date of deposit to ensure that the funds are not withdrawn prior to collection of the check, which is the commission's current practice. If youth moves between institutions or contract residential facilities, the youth's check must be mailed to the new placement location. When a youth is release from a residential program with the expectation that he will not be returning, trust funds are withdrawn and given to the youth. However, if the youth has a large sum in his/her trust fund, the youth is given a small amount with the balance in a check mailed to his/her parole officer.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amended section will be the availability of current and accurate agency policy. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. No private real property rights are affected by adoption of this amendment.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or e-mail to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed amendment affects the Human Resources Code, §61.034.

§99.31. Youth Banking.

(a) - (e) (No change.)

(f) Funds from deposit of personal checks will not be available for use for 15[~~10~~] days to allow funds to clear the financial institution.

(g) - (k) (No change.)

(l) If the youth is moved between TYC residential programs or contract care residential programs, the youth's check must be mailed to the new placement location.

(m) When a youth is released from a TYC residential program with the expectation that he/she will not be returning, the youth's trust funds are withdrawn and given to the youth, unless the youth has a large sum in his/her trust fund or youth's account cannot be closed when the youth departs. If the youth has a large sum in his/her trust fund, the youth is given a small amount upon his/her departure and the remaining balance will be mailed to the youth's parole officer. If the youth's account cannot be closed when the youth departs, because of holds, etc., a check will be mailed to the parole officer once the account is cleared of any questions. The parole officer will provide the youth the remaining balance from the trust fund during the youth's scheduled visit to the parole officer.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 17, 2005.

TRD-200501216

Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: May 1, 2005
For further information, please call: (512) 424-6301

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SUBCHAPTER C. MISCELLANEOUS

37 TAC §99.59

The Texas Youth Commission (the commission) proposes an amendment to §99.59, concerning Transportation of Youth. The amended section will include a reference to the recently adopted §97.23, concerning Physical Restraint.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amended section will be the availability of current and accurate agency policy. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. No private real property rights are affected by the adoption of this amendment.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or e-mail to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed amendment affects the Human Resources Code, §61.034.

§99.59. Transportation of Youth.

(a) [~~Purpose.~~] The purpose of this policy is to establish a system whereby Texas Youth Commission (TYC) [~~TYC~~] staff transport youth among assigned placements.

(b) The statewide transportation unit, area transportation unit, and individual program staff may transport or coordinate the transportation of TYC [~~Texas Youth Commission (TYC)~~] youth among its facilities and community corrections programs.

(c) - (e) (No change.)

(f) All use of mechanical restraint during transportation shall be in accordance with §97.23 of this title (relating to Physical Restraint) [~~(GAP) §97.23 of this title (relating to Use of Force)~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 17, 2005.

TRD-200501205

Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: May 1, 2005
For further information, please call: (512) 424-6301

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 5. TEXAS VETERANS LAND BOARD

CHAPTER 176. VETERANS HOMES

40 TAC §176.7

The Texas Veterans Land Board (VLB) proposes the amendment of §176.7 relating to Admission Requirements. Section 176.7 governs the admission criteria for residents of the Texas State Veterans Home Program. Currently, the definition of veteran found in §176.7(a)(2) reflects requirements found in United States Code that governs the State Home Program. The VLB proposes this amendment to §176.7(a)(2) in order to conform to the definition of veteran as used for all other VLB programs, as defined by Texas Natural Resources Code §161.001(a)(7).

Mr. Larry Laine, Chief Clerk of the General Land Office, has determined that for each year of the first five years the amended sections as proposed are in effect there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the amended sections as the amendments constitute minor clarifications and updates to the rules.

Mr. Larry Laine, Chief Clerk of the General Land Office, has determined that there will be no economic cost to persons required to comply with these rules, as these amendments add no additional restrictions or requirements that did not already exist. The public will benefit from the proposed rule amendments because the amended rules will provide more clarity. There will be no effect on small businesses, and a local employment impact statement on these proposed regulations is not required, because the proposed amendments will not adversely affect any local economy in a material manner for the first five years they will be in effect.

The VLB invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Walter Talley, *Texas Register* Liaison, Texas General Land Office, P. O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Written comments must be received no later than thirty (30) days from the date of publication of this notice.

The amendment is proposed under the Natural Resources Code, §164.004(6), which authorizes the VLB to adopt rules and procedures for among other things, the operation of veterans homes. The amendment is proposed under Natural Resources Code §161.001(b), which authorizes the VLB to change the definition of "veteran" as necessary or appropriate to protect the best interests of the Texas State Veterans Home Program.

Texas Natural Resources Code, §161.001(a)(7) is affected by the proposed amendment.

§176.7. Admission Requirements.

(a) The Board finds that it protects the best interests of the State Veterans Home Program to qualify the program for all available funding from the USDVA.

(1) USDVA requires that the program only admit to a SVH those applicants who satisfy all medical, financial, and military service requirements set forth in USDVA regulations, as they are amended from time-to-time.

(2) For purposes of this section, [~~unless the context provides otherwise,~~] the term "veteran" means a person who meets the requirement of veteran as defined in §161.001(a)(7) Texas Natural Resources Code [~~all military service requirements to receive benefits from the USDVA, as those requirements are set forth in 39 U.S.C.A. §101, 38 U.S.C.A. §5303A, and the regulations of the USDVA as amended from time-to-time~~].

(b) - (c) (No changes.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 21, 2005.

TRD-200501220
Trace Finley
Policy Director
Texas Veterans Land Board
Earliest possible date of adoption: May 1, 2005
For further information, please call: (512) 305-8598

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER D. VOTING SYSTEM CERTIFICATION

1 TAC §81.64

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amended section, submitted by the Office of the Secretary of State has been automatically withdrawn. The amended section as proposed appeared in the September 17, 2004 issue of the *Texas Register* (29 TexReg 8977).

Filed with the Office of the Secretary of State on March 21, 2005.

TRD-200501226

♦ ♦ ♦

1 TAC §81.66

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed new section, submitted by the Office of the Secretary of State has been automatically withdrawn. The new section as proposed appeared in the September 17, 2004 issue of the *Texas Register* (29 TexReg 8977).

Filed with the Office of the Secretary of State on March 21, 2005.

TRD-200501227

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 100. CHARTERS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPEN-ENROLLMENT CHARTER SCHOOLS

The Texas Education Agency (TEA) adopts amendments to §§100.1011, 100.1021, 100.1025, 100.1027, 100.1031, 100.1033, 100.1035, 100.1041, 100.1043, 100.1051, 100.1101-100.1104, 100.1111, 100.1131, 100.1151, 100.1201, 100.1207, 100.1209, and 100.1211 and new §100.1022, concerning open-enrollment charter schools. The amendments to §§100.1011, 100.1021, 100.1025, 100.1027, 100.1031, 100.1033, 100.1035, 100.1041, 100.1043, 100.1051, 100.1101, 100.1151, 100.1201, and 100.1209 are adopted without changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11847) and will not be republished. New §100.1022 and the amendments to §§100.1102, 100.1103, 100.1104, 100.1111, 100.1131, 100.1207, and 100.1211 are adopted with changes to the proposed text. The sections address general provisions as well as provisions relating to commissioner action and intervention, funding and financial operations, governance, and operations. The adopted amendments update, revise, and clarify these provisions. Adopted new §100.1022 establishes standards and criteria for use in an administrative hearing on any adverse action taken by the commissioner against a charter holder.

House Bill 6, 77th Texas Legislature, 2001, directed the commissioner of education to adopt rules for a wide range of issues related to open-enrollment charter schools. Accordingly, rules in 19 TAC Chapter 100, Subchapter AA, were adopted to be effective in November 2001. Rules were also added and amended to be effective in April 2002 and June 2003. The rules in 19 TAC Chapter 100, Subchapter AA, are organized in divisions addressing related subject matter, as follows: Division 1. General Provisions; Division 2. Commissioner Action and Intervention; Division 3. Charter School Funding and Financial Operations; Division 4. Property of Open- Enrollment Charter Schools; Division 5. Charter School Governance; and Division 6, Charter School Operations. This action adopts amendments to rules in Divisions 1, 2, 3, 5, and 6, in addition to a new rule in Division 2.

Division 1. General Provisions.

The amendment to 19 TAC §100.1011, Definitions, provides definitions for charter school "campus" and charter school "site." This amendment also provides an additional exception to the definition of "management company." Technical edits to other definitions are also adopted. No changes were made to this section since published as proposed.

Division 2. Commissioner Action and Intervention.

The amendment to 19 TAC §100.1021, Adverse Action on an Open-Enrollment Charter, emphasizes that accountability ratings are grounds for adverse action against a charter holder. In addition, the amendment establishes that hearings on adverse action taken against a charter holder by the commissioner will be held by the State Office for Administrative Hearings. The amendment also revises and clarifies timelines for hearing requests, exceptions, and replies. No changes were made to this section since published as proposed.

The adopted new 19 TAC §100.1022, Standards for Adverse Action on an Open-Enrollment Charter, establishes the standards and criteria for use in an administrative hearing on any adverse action taken by the commissioner against a charter holder. The adopted rule includes provisions related to required minimum student, financial, compliance, health and safety, and charter performance, along with probation and modification provisions for mitigating and aggravating factors.

In response to public comment, §100.1022 was modified since published as proposed in order to address provisions related to required student and financial performance. Language was added to subsection (b) related to charters being revoked or non-renewed based on unsatisfactory student performance as measured by accountability ratings. Language was added to subsection (c) providing examples of serious unsatisfactory financial performance. In addition to the changes made in response to public comment, the language of subsections (b)(3), (c)(3), (d)(3), (e)(3), and (f)(3) has been modified to clarify procedures for appealing specified agency actions and to clarify Government Code procedures for requesting agency rulemaking or challenging agency rules.

The amendment to 19 TAC §100.1025, Intervention Based on Health, Safety, or Welfare of Students, revises the hearing process for cases in which the commissioner intervenes in charter school operations to protect the health, safety, and welfare of students. The amendment establishes that such hearings may no longer be conducted under 19 TAC Chapter 157, Subchapter AA, General Provisions for Hearings Before the Commissioner of Education. No changes were made to this section since published as proposed.

The amendment to 19 TAC §100.1027, Accreditation Sanctions, changes the rule title to Accountability Ratings and Sanctions and emphasizes that the commissioner may take any accountability action under TEC, Chapter 39, Subchapters B, C, D, or G,

that may be taken against a school district or campus as authorized under those subchapters. No changes were made to this section since published as proposed.

The amendment to 19 TAC §100.1031, Charter Renewal, establishes that commissioner decisions about charter renewals are governed by new 19 TAC §100.1022. No changes were made to this section since published as proposed.

The amendment to 19 TAC §100.1033, Charter Amendment, revises the process for amending a charter. This amendment establishes specific types of amendments as "substantive" and clarifies the type of data considered as relevant information. In addition, the amendment establishes the submission date for expansion amendments, revises the length of time a charter school must have operated before expanding, and incorporates new requirements from TEC, §12.114, regarding amendment requests to increase maximum enrollment. No changes were made to this section since published as proposed.

The amendment to 19 TAC §100.1035, Compliance Records on Nepotism, Conflicts of Interest, and Restrictions on Serving, revises the timeline for running criminal history checks on members of the governing bodies of the charter holder and the charter school, officers of the charter school, and employees of the charter school and requires that the records be made available to the TEA upon request. No changes were made to this section since published as proposed.

Division 3. Charter School Funding and Financial Operations.

The amendment to 19 TAC §100.1041, State Funding, incorporates new requirements from TEC, §12.1061, regarding the recovery of over-allocated funds by the TEA for student attendance in a program affected by an expansion that was not approved by the commissioner. No changes were made to this section since published as proposed.

The amendment to 19 TAC §100.1043, Status and Use of State Funds; Depository Contract, revises the procedure for submitting bank depository contracts. No changes were made to this section since published as proposed.

The amendment to 19 TAC §100.1051, Audit by Commissioner; Records in the Possession of a Management Company, incorporates new requirements from TEC, §12.1163, limiting on-site audits of a charter school, charter holder, or management company by the TEA to one per year unless the commissioner has specific cause. No changes were made to this section since published as proposed.

Division 5. Charter School Governance.

The amendment to 19 TAC §100.1101, Delegation of Powers and Duties, requires prior notice to the TEA of any bankruptcy proceeding initiated by a charter holder. No changes were made to this section since published as proposed.

The amendment to 19 TAC §100.1102, Training for Members of Governing Bodies of Charter Holder and School, revises the language that deals with the 60-minute board training module related to assessments, reporting requirements, and accountability ratings and sanctions. The amendment also modifies the time requirement for the module related to the use of public funds, provides further specification related to the required 12-hour instruction, and modifies provisions related to training for members of organizations based on accountability ratings.

In response to public comments, §100.1102 was modified since published as proposed. Language was modified in subsection (d) to clarify the distribution of minutes for the total required hours of training. Language was modified in subsection (f) to allow an exception to the restriction of the use of self-instructional materials. Language was also added to subsection (f) to allow 25% of continuing training hours earned in excess of required hours to carry over to the next year. Language was modified and new language was added with new subsection (h) related to limited exemptions for members of the governing body of charters whose campuses are all rated "Acceptable" or higher for at least two out of three of the most recent ratings.

The amendment to 19 TAC §100.1103, Training for Chief Executive and Central Administrative Officers, provides further specification related to the required 30-hour instruction; modifies the time requirements for modules related to school finance and public records; revises the language that deals with the 240-minute module related to assessments, reporting requirements, and accountability ratings and sanctions; and also modifies provisions related to training for officers of organizations based on accountability ratings. The amendment also revises the requirements for chief executive and central administrative officer training to exempt those who have the lifetime equivalent of a Standard Superintendent Certificate issued by the State Board for Educator Certification (SBEC).

In response to public comments, §100.1103 was modified since published as proposed. Language was modified in subsection (d) to clarify the distribution of minutes for the total required hours of training. Language was modified in subsection (f) to allow an exception to the restriction of the use of self-instructional materials. Language was also added to subsection (f) to allow 25% of continuing training hours earned in excess of required hours to carry over to the next year. Language was modified and new language was added with new subsection (h) related to limited exemptions for chief executive and central administrative officers of charters whose campuses are all rated "Acceptable" or higher for at least two out of three of the most recent ratings.

The amendment to 19 TAC §100.1104, Training for Campus Administrative Officers, provides further specification related to the required 10-hour instruction; modifies the time requirements for modules related to school law, school finance, health and safety issues, use of public funds, accountability to the public, open meetings requirements, and public records; and modifies provisions related to continuing training for officers of organizations based on accountability ratings. The amendment also revises the requirements for campus administrative officer training to exempt those who have the lifetime equivalent of a Standard Principal Certificate issued by SBEC.

In response to public comment, §100.1104 was modified since published as proposed. Language was added to subsection (f) to allow 25% of continuing training hours earned in excess of required hours to carry over to the next year.

The amendment to 19 TAC §100.1111, Applicability of Nepotism Provisions; Exceptions for Acceptable Performance, revises definitions to conform to new 19 TAC §100.1022.

In response to public comment, §100.1111 was modified since published as proposed. Language was changed in subsection (g) to allow a charter holder 60 days, rather than 30, to come into compliance after it is assigned a rating that renders it ineligible for exemption to nepotism restrictions.

The amendment to 19 TAC §100.1131, Conflicts of Interest and Board Member Compensation; Exception, revises the exceptions to the conflict of interest provisions based on accountability ratings.

In response to public comment, §100.1131 was modified since published as proposed. Language was added to subsection (d) to clarify the applicability of sufficient substantive ratings, consistent with provisions in §100.1111(c)(3).

The amendment to 19 TAC §100.1151, Criminal History; Restrictions on Serving, revises the timeline for running criminal history checks on members of the governing bodies of the charter holder and the charter school, officers of the charter school, and employees of the charter school. No changes were made to this section since published as proposed.

Division 6. Charter School Operations.

The amendment to 19 TAC §100.1201, Voluntary Participation in State Programs, corrects a statutory reference. No changes were made to this section since published as proposed.

The amendment to 19 TAC §100.1207, Student Admission, establishes exceptions to the admissions lottery, specifies elements of the required non-discrimination policy for admissions.

In response to public comments, §100.1207 was modified since published as proposed. Proposed subsection (e) was modified to retain language addressing transfers that permits a charter school to admit students who reside outside of the designated geographic areas if the charter so provides. Proposed subsections (f) and (g) were deleted.

The amendment to 19 TAC §100.1209, Municipal Ordinances, revises language to conform to a new definition proposed in 19 TAC §100.1011. No changes were made to this section since published as proposed.

The amendment to 19 TAC §100.1211, Students, establishes that minimum teacher qualifications must comply with federal regulations. The amendment also clarifies the data reporting requirement.

In response to public comment, §100.1211 was modified since published as proposed in order to clarify that although a high school equivalency certificate is not the equivalent of a high school diploma for the purposes of TEC, §12.129, a person with a GED who obtains a college degree is qualified to teach at a charter school under the rule.

The adopted rule actions have the following procedural and reporting implications.

The amendments to 19 TAC §§100.1033, 100.1102, 100.1103, 100.1104, and 100.1211 replace specific reference to the Public Education Information Management System (PEIMS) with a more appropriate and general reference to all TEA data reporting requirements.

The amendment to 19 TAC §100.1033 requires that expansion amendments be received by the TEA by the first day of February preceding the school year in which the expansion is to be effective. There was no requirement that such requests be filed with the TEA by a specific date.

The amendments to 19 TAC §100.1035 and 19 TAC §100.1151 require that every three years a charter holder run criminal history checks on members of the governing bodies of the charter holder and the charter school, officers of the charter school, and employees of the charter school. Currently, such checks are required annually.

The amendment to 19 TAC §100.1043 requires that a charter holder submit a bank depository contract to the TEA only if there has been a change since the last filing, although the charter holder must file a statement to this effect in lieu of a copy of the depository contract. Currently, depository contracts must be filed annually.

The amendment to 19 TAC §100.1101 requires that a charter holder notify the TEA of any bankruptcy proceeding initiated by a charter holder.

Comments from stakeholders contributed to the development of the proposed amendments. A public hearing on the proposed amendments was held on January 10, 2005. In addition, the public was given the opportunity to submit written/electronic comments. Following is a summary of public comments received and corresponding agency responses regarding the proposed amendments to 19 TAC Chapter 100, Subchapter AA.

§100.1011. Definitions.

Comment. The Association of Charter Educators recommended eliminating §100.1011(15)(C) and (E), stating the sections create uncertainty and ambiguity about charter terms and responsibilities.

Agency Response. The agency disagrees with the comment and has maintained the language of §100.1011(15)(C) and (E), as proposed. The agency considers both its own request for application and all additional supplementary documents supplied by the charter holder to the agency to be relevant to defining the terms and conditions of open-enrollment charters.

§100.1021. Adverse Action on an Open-Enrollment Charter.

Comment. The director of special education/instructional supervisor of Austin Can Academy, Dallas Can Academy, Fort Worth Can Academy, Houston Can Academy, and San Antonio Can High School expressed concern that the requirements in proposed §100.1021 mean stricter requirements for charter schools than for traditional schools and requested standards required under TEC, §39.132.

Agency Response. The agency disagrees with the comment and has maintained the language of §100.1021, as proposed. Section 100.1021 will exist and function in concert with TEC, §39.132, and does not diminish or eliminate the agency's ability to use campus sanctions and remedies specified in TEC, §39.132. In addition, TEC, §39.132, makes no provision for charter school revocation or non-renewal, while §100.1021, under the authority of TEC, §12.115, does.

Comment. The Association of Charter Educators suggested changing the time allowed for requesting a hearing as proposed in §100.1021(d) from ten business days to at least 15 business days.

Agency Response. The agency disagrees with the comment and has maintained the language of §100.1021(d), as proposed. The standard set forth in this provision already alters the current rule's time requirement for requesting a hearing from ten days to ten business days, and adding an additional five days to the charter school's response time will likely only have the effect of delaying the adjudication of the case.

Comment. The Association of Charter Educators agreed with the change in proposed §100.1021(d) allowing the commissioner

to review and, if warranted, act upon a charter holder's response to the notice issued pursuant to §100.1021(b).

Agency Response. No response required.

§100.1022. Standards for Adverse Action.

Comment. The Resource Center for Charter Schools, Westlake Academy, Dallas Community Charter School, and EduStart-LLP expressed support for this section of proposed rules if the changes will allow fraudulent and consistently low-performing charter schools to be closed in a timely manner. There is support for stronger language if needed.

Agency Response. No response required.

Comment. The Association of Charter Educators raised concerns about the agency evaluating charter school performance based solely on standardized test scores when applying §100.1022.

Agency Response. The agency disagrees with the comment, and has drafted the new rules to further enhance and define the existing authority to allow the agency to fairly, accurately, and efficiently take action against charter holders that are failing to meet acceptable academic standards. Section 100.1022(g)(2) allows a charter holder, under limited circumstances, to raise mitigating factors in a case where charter revocation is otherwise warranted due to the charter school's failure to meet accountability standards prescribed by §100.1022(b).

Comment. The Association of Charter Educators raised concerns that the proposed rules relating to the best interest of the students conflicts with TEC, §12.115(b).

Agency Response. The agency disagrees with the comment, and will maintain all provisions relating to the best interest of the student, as proposed. Potential action under TEC, §12.115 would, by definition, be undertaken in the best interest of the school's students. The thrust of both TEC, §12.115, and proposed §100.1022(b) are to make charter holders accountable for academic performance, fiscal management, and the health, safety, and welfare of their students; not to allow them to use the concept of the best interest of students as a convenient excuse to avoid being held accountable for unsatisfactory performance.

Comment. The Association of Charter Educators commented that the proposed rules preclude the charter holder from contesting evidence that could be submitted at hearing, preclude the administrative law judge from properly considering and weighing evidence, and, more generally, prevent a charter holder from defending itself at a hearing.

Agency Response. The agency disagrees with the comment, and will maintain all hearing procedure rules, as proposed. While the rules were drafted with a desire to provide adequate due process safeguards to charter holders, which has certainly been accomplished, such desire has been carefully balanced with a corresponding need for the agency to have the means to fairly, consistently, and efficiently accomplish the mandates set forth in TEC, §12.115.

Comment. The Association of Charter Educators states that Chapter 39 of the TEC appropriately addresses sanctions for public schools.

Agency Response. The agency disagrees. Section 100.1022 will exist and function in concert with TEC, Chapter 39, and does not diminish or eliminate the agency's ability to use campus sanctions and remedies specified in the TEC.

Comment. The Resource Center for Charter Schools, Westlake Academy, and Dallas Community Charter School expressed support for the addition of a financial accounting rating system for charters, and EduStart-LLP expressed support for the addition of a financial accounting rating system for charters provided that the system recognizes that charters may be more like campuses than districts and that the requirements remain manageable by a small staff.

Agency Response. Establishing a financial accountability rating system is beyond the scope of the proposed rules.

Comment. The Texas Association of School Boards requested language in proposed §100.1022(b)(1) that clarifies the number of consecutive years of unsatisfactory student performance ratings that a charter school may have before the commissioner is authorized to revoke or non-renew.

Agency Response. The agency agrees with the comment, and language has been added to §100.1022(b), under the authority of TEC, §12.115, which prescribes that an open-enrollment charter where all campuses have had two consecutive years of unsatisfactory accountability ratings shall be revoked or non-renewed. The language also prescribes that, for charter holders operating multiple campuses, where at least half of such campuses have had two consecutive years of unsatisfactory accountability ratings, the charter shall be revoked or non-renewed unless the charter holder has received a district level rating of acceptable or higher for either of the two years.

Comment. The Association of Charter Educators stated that TEC, Chapter 39, adequately addresses the issues in proposed §100.1022(b)(1) and stated that a "one-size-fits-all" punishment is not always appropriate. However, the Association asked that if the agency plans to return to a specific standard that the rule clarify the number of consecutive years of unsatisfactory student performance ratings that a charter may have before the commissioner is authorized to revoke or non-renew. The Association suggested three consecutive years but requested that mitigating factors such as student growth and student population be considered when performance ratings are unsatisfactory.

Agency Response. The agency agrees to specify a standard for the number of years a charter holder's campus or campuses must be low-performing before their charter can be revoked or non-renewed, but disagrees that three consecutive years of unsatisfactory student performance should be the standard for such revocation or non-renewal under §100.1022(b). In light of TEC, §39.132, which allows the closure of a low-performing campus after two consecutive years of unsatisfactory accountability ratings, it logically follows that §100.1022(b) should clarify that two years of unsatisfactory accountability ratings can also result in charter revocation and non-renewal, as authorized by TEC, §12.115. Accordingly, §100.1022(b)(1) and §100.1022(b)(2)(A)-(F) have been modified to reflect the two-consecutive-year standard. All other issues raised in the comment have been addressed in previous responses.

Comment. The Association of Charter Educators requested that the language allowing the commissioner to serve additional students or grade levels as proposed in §100.1022(b)(2)(F)(ii) be stricken so as not to burden small, rural charters with limited populations.

Agency Response. The agency disagrees with the comment and has maintained the language of §100.1022(b)(2)(F)(ii), as proposed. The agency has not been provided with evidence indicating that such a provision will burden small, rural charters with limited populations assuming that such can even be defined.

Comment. I Am That I Am Academy requested that if additional students and grade levels are added as proposed in §100.1022(b)(2)(F)(ii), that alternative accountability be allowed as well as equalized funding for the additional students.

Agency Response. The agency disagrees with the comment and has maintained the language of §100.1022(b)(2)(F)(ii), as proposed. There is no statutory authority allowing the agency to do what is being suggested in the comment.

Comment. The Association of Charter Educators stated that traditional districts are considered substandard if the audit receives an unqualified opinion and does not report a material weakness, but that a higher standard is being placed on charter schools in proposed §100.1022(c)(2)(A) because either of the two findings would be the basis for unsatisfactory performance.

Agency Response. The agency disagrees with the comment and has maintained the language of §100.1022(c)(2)(A), as proposed. It is the agency's position that, in light of the myriad differences between traditional school districts and charter schools, including the mode and manner by which they are funded and governed, §100.1022(c)(2)(A) is an appropriate provision.

Comment. The Association of Charter Educators stated that the 60-day standard to submit an audit report as proposed in §100.1022(c)(2)(A) will help ensure compliance.

Agency Response. No response required.

Comment. The Texas Association of School Boards requested additional language in proposed §100.1022(c)(2)(B) to clearly define what is meant by the following terms: improper transfers, unauthorized recipient, and good faith.

Agency Response. The agency agrees with the comment and has added into §100.1022(c)(2)(B) examples defining a number of shortcomings that are considered to be serious unsatisfactory financial performance for purposes of the rule.

Comment. The Association of Charter Educators stated that the phrase "health, safety, and welfare" as used in proposed §100.1022(e), is ambiguous and suggested using definitions of such in statutes such as TEC, Chapter 38.

Agency Response. The agency disagrees with the comment and has maintained the language of §100.1022(e), as proposed. Enumerating in rule all potential situations and scenarios that might be considered to negatively impact a student's health, safety, and welfare for purposes of the rule would be nearly impossible given the many risks that students could potentially face.

Comment. The Association of Charter Educators and Dallas Community Charter School opposed the use of hearsay evidence in the determination of health, safety, and welfare issues as outlined in proposed §100.1022(e)(2)(B).

Agency Response. The agency disagrees with the comment and has maintained the language of §100.1022(e)(2)(B), as proposed. The interest at issue, the health, safety, and welfare of Texas' students, is a vitally important interest; one that justifies using a relaxed evidentiary standard in a narrow and limited circumstance such as that provided for in §100.1022(e)(2)(B). The administrative law judge hearing a case still has the authority to give such hearsay evidence what he or she feels to be the proper weight in determining a case.

Comment. The Association of Charter Educators noted that the clarification proposed in §100.1022(f)(2)(B) explains what is meant by material violation.

Agency Response. No response required.

Comment. Southwest Preparatory School opposed the use of the word *must* in proposed §100.1022(g)(1)(B). The charter school is specifically concerned about academic performance standards and requested "sufficient time to improve the low performing students' skills."

Agency Response. The agency disagrees with the comment and has maintained the language of §100.1022(g)(1)(B), as proposed. The agency believes that, in order to most effectively foster enforcement consistency, the use of the word *must* in §100.1022(g)(1)(B) is necessary.

Comment. The director of special education/instructional supervisor of Austin Can Academy, Dallas Can Academy, Fort Worth Can Academy, Houston Can Academy, and San Antonio Can High School expressed concern that the requirements in proposed §100.1022 mean stricter requirements for charter schools than for traditional schools and requested standards required under TEC, §39.132.

Agency Response. The agency disagrees with the comment. Section 100.1022 will exist and function in concert with TEC, §39.132, and does not diminish or eliminate the agency's ability to use campus sanctions and remedies specified in TEC, §39.132. In addition, TEC, §39.132, makes no provision for charter school revocation or non-renewal, while §100.1022, under the authority of TEC, §12.115, does.

Comment. Rise Academy expressed concern that, while charter schools guilty of significant, material violations should be shut down, serious agency action must follow a proper and thorough due process.

Agency Response. The agency agrees that ensuring due process in its enforcement proceedings is vitally important, and asserts that the procedures set forth in §100.1022 fully comply with all requisite due process requirements.

§100.1031. Charter Renewal.

Comment. The chief executive officer of the Education Center and Temple Education Center suggested a requirement whereby the charter school can attach many items to the renewal application so that staff at the agency will have needed information at hand for renewal.

Agency Response. The agency disagrees with the comment and has maintained the language of §100.1031, as proposed. The agency has recently revised the renewal application and believes that many of the changes made will expedite the renewal process.

§100.1033. Charter Amendment.

Comment. The chief executive officer of the Education Center and Temple Education Center suggested that having charter schools attach various items to charter amendment requests will facilitate a speedier substantive amendment process.

Agency Response. The agency disagrees with the comment and has maintained the language of §100.1033, as proposed. Some

of the items discussed in the comment are readily accessible to agency staff and having the items attached to charter amendment requests would not likely expedite the amendment process. In addition, the agency believes that adding more requirements would not clarify the rule but rather would create ambiguity given that there are various types of substantive amendments.

Comment. The Association of Charter Educators opposed, as proposed in §100.1033(c), requiring changes in the articles of incorporation and in the bylaws to be substantive amendments, contending that TEC, §12.119, requires the annual filing of these documents and that the proposed subsection (c) would "thrust the Commissioner into the minutiae of each non-profit corporation…."

Agency Response. The agency disagrees with the comment and has maintained the language of §100.1033, as proposed. A charter holder's articles of incorporation and/or bylaws contain relevant information concerning a charter holder's governance structure and procedures, such as the processes for board member selection and removal and for conducting board meetings. Because governance matters are highly relevant to the agency and to the public, the agency must be aware of changes that a charter holder makes in these areas.

Comment. The Association of Charter Educators supported, as proposed in §100.1033(c)(5)(A)(i), that academically and fiscally high-performing charters do not need to wait until the third or fourth year to expand.

Agency Response. No response required.

§100.1101. Delegation of Powers and Duties.

Comment. The Resource Center for Charter Schools, Westlake Academy, Dallas Community Charter School, and EduStart-LLP supported proposed §100.1101(b)(3) that requires a charter school to notify the agency prior to filing bankruptcy.

Agency Response. No response required.

§100.1102. Training for Members of Governing Bodies of Charter Holder and School.

Comment. The Association of Charter Educators requested a reduction in the amount of required hours of training for board members in order to allow charters to retain members.

Agency Response. The agency agrees with the feasibility of accomplishing what is requested in the comment and modified the section accordingly; however, it cannot be overstated how important such training is to the effective and efficient governance of charter schools.

Comment. A project manager for the Texas High School Program suggested the following changes, supported by the Resource Center for Charter Schools, Westlake Academy, Dallas Community Charter School, and EduStart- LLP, to the proposed rules: 1. Reduce the training course from 12 hours to eight hours for a board member of a satisfactory charter (two out of three of the most recent ratings); 2. Reduce the hours in subsection (d) to conform to the eight-hour requirement as follows: Lower (d)(1) from 150 minutes to 60 minutes, lower (d)(4) from 120 minutes to 90 minutes, combine (d)(5), (d)(6), and (d)(7) into one module of 60 minutes instead of 60 minutes in each module, and allow any or all of the remaining 180 minutes of study to be spent in self-study; and 3. Reduce the continuing training course from six hours to three hours in subsection (f) for a board member of a satisfactory charter (two out of three of the most recent ratings).

Agency Response. The agency agrees with the comment and suggested training requirements, with the exception of the provision seeking to combine §100.1102(d)(5), (d)(6) and (d)(7) into one module of 60 minutes, and has modified the section accordingly. The agency combined the three into one combined module of 120 minutes, rather than 60, and allowed the balance of the required minutes to consist of self study. The agency believes that such a modification will not compromise the goals and effectiveness of the rule.

Comment. The Association of Charter Educators suggested allowing in proposed §100.1102(f) that 25% of hours earned in excess of required hours be carried over into the next year.

Agency Response. The agency agrees with the comment, and has changed §100.1102(f) to allow 25% of the hours earned in excess of the required hours to be carried over into the next year.

§100.1103. Training for Chief Executive and Central Administrative Officers.

Comment. The Association of Charter Educators requested a reduction in the amount of required hours of training to allow charters to retain trained and effective staff.

Agency Response. The agency agrees with the feasibility of accomplishing what is requested in the comment and modified the section accordingly; however, it cannot be overstated how important such training is to the effective and efficient governance of charter schools.

Comment. A project manager for the Texas High School Program suggested the following changes, supported by the Resource Center for Charter Schools, Westlake Academy, Dallas Community Charter School, and EduStart- LLP, to the proposed rules: 1. Reduce the training course from 30 to eight hours for a chief executive officer or central administrative officer of a satisfactory charter (two out of three of the most recent ratings); 2. Reduce the hours in subsection (d) to conform to the eight-hour requirement as follows: Lower (d)(1) from 240 minutes to 60 minutes, lower (d)(2) from 240 minutes to 60 minutes, combine (d)(3), (d)(6), and (d)(7) into one module of 60 minutes instead of the total 300 minutes, lower (d)(4) from 240 minutes to 60 minutes, lower (d)(5) from 240 minutes to 60 minutes, and allow any or all of the remaining 180 minutes of study to be spent in self-study; and 3. Reduce the continuing training course from 15 hours to four hours in subsection (f) for a chief executive officer or central administrative officer of a satisfactory charter (two out of three of the most recent ratings).

Agency Response. The agency agrees, in part, with the comment and suggested training requirements and has modified the section accordingly. The agency lowered the requirement in subsection (d)(1) to 210 minutes; lowered the requirement in subsection (d)(2) to 210 minutes; combined the requirements in §100.1103(d)(3), (d)(6) and (d)(7) into one module of 270 minutes; lowered the requirements in subsection (d)(4) to 210 minutes; and allowed 180 minutes to be spent in self study. The agency has kept the requirements set forth in subsections (d)(5) and (f) the same as already proposed, with the exception of allowing the 25% carryover referenced in the following comment. The agency believes that such will not compromise the goals and effectiveness of the rule.

Comment. The Association of Charter Educators suggested allowing in proposed §100.1103(f) that 25% of hours earned in excess of required hours be carried over into the next year.

Agency Response. The agency agrees with the comment, and has changed §100.1103(f) to allow 25% of the hours earned in excess of the required hours to be carried over into the next year.

§100.1104. Training for Campus Administrative Officers.

Comment. The Association of Charter Educators requested a reduction in the amount of required hours of training to allow charters to retain trained and effective staff.

Agency Response. The agency disagrees with the comment and has maintained the language of §100.1104, as proposed. The training requirements mandated by this section are necessary to help ensure that campus administrative officers are properly trained.

Comment. A project manager for the Texas High School Program suggested the following changes, supported by the Resource Center for Charter Schools, Westlake Academy, Dallas Community Charter School, and EduStart- LLP, to the proposed rules: 1. Reduce the training course from 10 to six hours for a campus administrative officer of a satisfactory charter (two out of three of the most recent ratings); 2. Reduce the hours in subsection (d) to conform to the eight-hour requirement as follows: Lower (d)(1) from 90 minutes to 30 minutes, combine (d)(3), (d)(6), and (d)(7) into one module of 60 minutes instead of the total 180 minutes, lower (d)(5) from 120 minutes to 60 minutes, and allow any or all of the remaining 120 minutes of study to be spent in self-study; and 3. Reduce in subsection (f) the continuing training course from five hours to three hours for a campus administrative officer of a satisfactory charter (two out of three of the most recent ratings).

Agency Response. The agency disagrees with the comment and has maintained the language of §100.1104, as proposed, with the exception of allowing the 25% carryover in §100.1104(f) as requested by the Association of Charter Educators. The training requirements mandated by this section are necessary to help ensure that campus administrative officers are properly trained.

Comment. The Association of Charter Educators suggested allowing in proposed §100.1104(f) that 25% of hours earned in excess of required hours be carried over into the next year.

Agency Response. The agency agrees with the comment, and has changed §100.1104(f) to allow 25% of the hours earned in excess of the required hours to be carried over into the next year.

§100.1111. Applicability of Nepotism Provisions; Exception for Acceptable Performance.

Comment. The Association of Charter Educators suggested that §100.1111(g) be changed to allow 90 days instead of 30 days for charters that lose the exemption to come into compliance.

Agency Response. The agency agrees with the comment, in part. While the 30-day time period may be burdensome for some charter holders, the agency believes that giving charter holders up to 90 days to come into compliance is too long a period of time. Accordingly, §100.1111(g) has been modified to require a charter holder to come into compliance within 60 days after it is assigned a rating that renders it ineligible for the exemption.

Comment. Rise Academy commented that the new provisions in §100.1111 regarding nepotism are even more restrictive than the original rules and contends that a charter school's founders should be exempt from the nepotism requirements.

Agency Response. The agency disagrees with this comment and, with the exception of the modification made to regarding §100.1111(g), has maintained the language of §100.1111 as proposed. The proposed changes to §100.1111 were not substantive in nature but rather change the terminology concerning accountability ratings. The agency believes that the nepotism provisions in the rules are consistent with the mandates imposed by House Bill 6.

§100.1131. Conflict of Interest and Board Member Compensation; Exception.

Comment. The Texas Association of School Boards requested that language be added in proposed §100.1131(d) to be consistent with the language in proposed §100.1111(c)(3) regarding nepotism.

Agency Response. The agency agrees with the comment and has amended §100.1131(d)(3) so that it is consistent with the provisions regarding nepotism in §100.1111(c)(3).

Comment. Rise Academy commented that the new provisions in §100.1131 are even more restrictive than the original rules and contends that a charter school's founders should be allowed to serve in multiple capacities, such as paid directors, principals, etc., of the school while also serving on the charter holder's board of directors.

Agency Response. The agency disagrees with the comment and has maintained the language of §100.1131, as proposed, with the exception of the modification made to subsection (d). The proposed changes to §100.1131 were necessary to align the conflict of interest provisions with the nepotism provisions. Furthermore, the agency believes that both the nepotism and conflict of interest rules are consistent with the mandates imposed by House Bill 6.

§100.1207. Student Admission.

Comment. A representative of the Resource Center for Charter Schools; the executive director of the Association of Charter Educators; a chief executive officer of a municipality that holds a charter; the CEO of EduStart-LLP; NYOS and Dallas Community Charter School administrators; and 43 other charter board members, administrators, and staff who signed a petition requested a change to proposed subsection (b) to allow enrollment priority for teachers' children.

Agency Response. The agency disagrees with the comment and has maintained the language of §100.1207(b), as proposed. The suggested language is inconsistent with the current non-regulatory guidance for the federal Charter Schools Program, which does not permit that preference in admission be given to teachers' children.

Comment. The Resource Center for Charter Schools, the Association of Charter Educators, Westlake Academy, and Dallas Community Charter School requested a change to §100.1207(d)(2) to include language stating that non-discriminatory enrollment criteria may "make the student eligible for enrollment based on the campus at which the student was enrolled on the last day of the prior year" if this would permit charter schools to establish a feeder pattern like those used by school districts. The language was included in a draft version of the proposed rules but not included in the version that was filed with the Texas Register.

Agency Response. The agency disagrees with the comment and has maintained the language of §100.1207(d)(2), as proposed. The agency believes that the suggested language conflicts with TEC, §12.111(a)(6), which requires charter schools to prohibit

discrimination in admissions policies on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. Unlike charter schools, school district campuses may in certain circumstances limit enrollment to certain categories of students. Allowing a school district campus to "feed into" a charter school could circumvent the intent of TEC, §12.111(a)(6). In addition, the agency believes that the suggested language also conflicts with the non-regulatory guidance for the federal Charter Schools Program, which does not permit that charter school applicants who attended a particular public school the previous year be given priority in admission.

Comment. Westlake Academy and Dallas Community Charter School with the support of the Resource Center for Charter Schools, and EduStart-LLP requested changes to the proposed §100.1207(f) and (g) to allow charter schools to admit students who reside outside of the designated geographic boundaries. The commenters contended that eliminating the ability to admit transfer students will have an adverse impact on some charter schools in small communities that must admit transfer students in order to reach enrollment capacity. The commenters asserted that if these charter schools are required to designate a larger geographic boundary to meet their enrollment needs, the number of students from the community which founded the school will decrease because they will now have to compete for admission with a larger applicant pool.

Agency Response. The agency agrees with the comment and has deleted §100.1207(f) and (g). Section 100.1207(e) has been modified to include language that permits a charter school to admit students who reside outside of the designated geographic area if the charter so provides.

§100.1211. Students.

Comment. The Texas Association of School Boards requested language to clarify that in proposed §100.1211(f) a GED is not equivalent to a high school diploma, but if a person with a GED later obtains a college degree, the person may be qualified to teach at a charter school.

Agency Response. The agency agrees with the comment, and has modified §100.1211(f) to clarify that a high school equivalency certificate is not a high school diploma for the purposes of TEC, §12.129; however, a person with a GED who obtains a college degree is qualified to teach at a charter school under the rule.

Comment. The Association of Charter Educators requested that the language in proposed §100.1211(f) be reviewed carefully so that there is not an unintended consequence of requiring teachers to be certified.

Agency Response. The agency disagrees with the comment. Nothing in §100.1211(f) requires explicitly or implicitly that a teacher must be certified in order to teach at a charter school.

Comment. Rise Academy contended that denying flexibility in teacher credentials would adversely affect charter autonomy and the concept of alternative schooling of choice. The charter holder expressed concern that this provision will eliminate the ability of charters to select and retain the people that they find most effective in educating their student populations.

Agency Response. The agency disagrees with the comment. Section 100.1211(f) merely clarifies that charter school teachers must meet the qualifications imposed by federal law when it applies or those under state law when federal law defers to the state law standard.

Other Comments.

Comment. A representative from the Texas Classroom Teachers Association expressed appreciation for the rules as written.

Agency Response. No response required.

Comment. A representative from the Texas Federation of Teachers expressed a desire to see some of the rules go further.

Agency Response. No response required.

Comment. The Resource Center for Charter Schools, the Association of Charter Educators, Westlake Academy, Dallas Community Charter School, and EduStart-LLP supported intercept agreements to facilitate bonds for charter schools.

Agency Response. Intercept agreements are beyond the scope of the proposed rules.

Comment. The Resource Center for Charter Schools and Westlake Academy supported a delay in ratings for high-performing charters that expand to high school grades.

Agency Response. Delaying ratings is beyond the scope of the proposed rules.

Comment. The superintendent of Eagle Academies of Texas encouraged others to recognize that students are different and schools will be different.

Agency Response. No response required.

Comment. The Association of Charter Educators requested a minimum of 90 days from the effective date of new rules to come into compliance with rule changes.

Agency Response: The agency disagrees with the comment. The agency maintains the latitude to set effective dates for the rules, as proposed. Implementation will begin with the effective date of the rules, April 6, 2005.

DIVISION 1. GENERAL PROVISIONS

19 TAC §100.1011

The amendment is adopted under the Texas Education Code, Chapter 12, Subchapter D, which authorizes the commissioner of education to adopt rules and procedures related to the implementation of open-enrollment charter schools.

The amendment implements the Texas Education Code, §12.1012 and §12.126.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 17, 2005.

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Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
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For further information, please call: (512) 475-1497

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DIVISION 2. COMMISSIONER ACTION AND INTERVENTION

19 TAC §§100.1021, 100.1022, 100.1025, 100.1027, 100.1031, 100.1033, 100.1035

The amendments and new rule are adopted under the Texas Education Code, Chapter 12, Subchapter D, which authorizes the commissioner of education to adopt rules and procedures related to the implementation of open-enrollment charter schools.

The amendments and new rule implement the Texas Education Code, §§12.104, 12.114, 12.115, 12.116, 12.120; and Texas Government Code, §2001.004(1).

§100.1022. Standards for Adverse Action on an Open-Enrollment Charter.

(a) Adverse action criteria. In accordance with this section, the action the commissioner of education takes under §100.1021 of this title (relating to Adverse Action on an Open-Enrollment Charter) shall be based on the best interest of the charter school's students as it relates to the violation charged in the notice, the severity of the violation, and any previous violation the school has committed.

(1) These adverse action criteria are not listed in order of importance. Rather, the commissioner shall assign weight to each criterion as indicated by the facts of the case presented. For example, serious or persistent charter violations may warrant revocation or non-renewal even if the violations benefited or had neutral effect on the students enrolled in the charter school. The state's interest in legal compliance is sufficient basis for adverse action without regard to evidence of harm to individual students.

(2) The "best interest of the charter school's students" is not a decisional criterion independent of the violation charged in the notice. Rather, the commissioner shall consider the best interests of students only as this criterion relates to the violation charged in the notice. For example, evidence of serious and persistent violations in one area of performance may not be offset or excused by evidence of benefit to students in an area of performance that is unrelated to the violation charged in the notice.

(b) Minimum student performance required. Continuation of an open-enrollment charter is contingent on satisfactory student performance as measured by accountability ratings assigned under the Texas Education Code (TEC), Chapter 39, as well as any supplemental accountability requirements in the open-enrollment charter pursuant to TEC, §12.111(a)(3) and (4). Such supplemental requirements are in addition to, and may not supplant, satisfactory student performance as measured by the ratings assigned under TEC, Chapter 39.

(1) Standard of required performance. The commissioner shall revoke or non-renew an open-enrollment charter of a charter holder if all of the campuses operated under that charter have been closed under TEC, Chapter 39. The commissioner shall revoke or non-renew an open-enrollment charter of a charter holder if at least half of the campuses operated under that charter have received unsatisfactory ratings for a period of two consecutive years unless the charter holder has received a district level rating of acceptable or higher for either of the two years. The commissioner shall not renew the open-enrollment charter of any otherwise-qualified charter holder unless the charter holder's renewal application removes all the charter holder's campuses that have been closed under TEC, Chapter 39.

(A) Paragraph (1) of this subsection applies the criteria in subsection (a) of this section to determine the sanction that is normally required for a charter school that receives unsatisfactory ratings. Accordingly, the appeal under §100.1021 shall normally be limited to the question of whether the charter school did in fact receive unsatisfactory ratings. Where relevant factors mitigate or aggravate the charter holder's unsatisfactory ratings, the appeal shall further consider factors described in subsection (g) of this section.

(B) Evidence that the charter holder achieved satisfactory performance under subsection (c), (d), (e), or (f) of this section shall not be considered in mitigation of unsatisfactory ratings under this subsection.

(2) Determination of performance. For purposes of this subsection, required minimum student performance shall be determined as follows.

(A) An "unsatisfactory rating" shall mean a substantive rating that is not satisfactory as defined in this section. For any school year, if the Texas Education Agency (TEA) assigns no district-level ratings to open-enrollment charter schools generally, but does assign campus-level ratings in that year, then unsatisfactory ratings for a majority of the campuses operated by the charter holder in such year shall constitute an unsatisfactory rating for the charter holder at the "district" level.

(B) For school years prior to 2004 - 2005, a "satisfactory rating" shall mean a substantive rating of "Acceptable," "Recognized," or "Exemplary" under the relevant accountability manual, or a rating of "Acceptable" or "Commended" under the relevant alternative education accountability manual. For the 2004 - 2005 and subsequent school years, a satisfactory rating will be indicated in the relevant accountability manual.

(C) For school years prior to 2004 - 2005, a "substantive rating" shall mean any rating under the alternative education accountability manual other than "Not Rated," or any rating under the accountability manual other than "Not Rated: Charter," "Not Rated: PK-K," "Not Rated: Alternative Education," or "Not Rated: Other." A rating of "Needs Peer Review" that is assigned due to the failure of the charter holder to comply with the requirements of the alternative education accountability manual (or any other reason) is a substantive rating. A rating assigned due to unsatisfactory compliance performance, as described in subsection (d) of this section, is a substantive rating.

(D) Ratings are "consecutive" if they are not separated by a rating period in which the TEA assigned accountability ratings to charter schools generally. For example, the TEA did not assign accountability ratings to charter schools for the 2002 - 2003 school year. Thus, the ratings for the 2001 - 2002 and 2003 - 2004 school years are consecutive. Similarly, if TEA does not assign accountability ratings to registered alternative education campuses for the 2004 - 2005 school year, then the ratings for the 2001 - 2002 and 2004 - 2005 school years may be consecutive within the meaning of this rule. However, student performance for a year in which ratings were not issued may be considered as a mitigating or aggravating factor.

(E) If the performance of an applicant for renewal under §100.1021 cannot be determined because the applicant's campus or campuses have not received substantive ratings for at least two consecutive years:

(i) the commissioner may decline to finally grant or deny the application until the applicant has received a sufficient number of ratings, in which case the charter shall continue in effect under §100.1031(a) of this title (relating to Charter Renewal);

(ii) the commissioner may grant the renewal on condition that one or more future substantive ratings be satisfactory; or

(iii) if the applicant has received two consecutive satisfactory ratings, the commissioner may grant the renewal unconditionally.

(F) If a campus has not received enough substantive ratings to determine performance under subsection (b)(1) of this section because the small numbers of students or the grade levels served by the program prevented the application of TEA's standard ratings criteria, then the commissioner may evaluate substitute data chosen by the commissioner in taking action under this section.

(i) Based on this evaluation, the commissioner shall determine whether the campus has met the requirements under subsection (b)(1) of this section. Any appeal under §100.1021 of a determination under this clause may include the question whether the campus has had unsatisfactory student performance.

(ii) Regardless of whether the campus has satisfactory student performance, the commissioner may modify the open-enrollment charter to require the charter holder to serve additional students or grade levels that will cause the campus to receive substantive ratings in the future.

(G) Evidence of relevant factors in mitigation or aggravation of the charter holder's failure to meet the minimum student performance requirements of this subsection shall be considered under subsection (g) of this section.

(3) Finality of ratings.

(A) Any appeal to a specific rating must be brought using the appeals procedures in the relevant accountability manual or alternative education accountability manual adopted as rules in Chapter 97, Subchapter AA, of this title (relating to Accountability and Performance Monitoring).

(B) Any challenge to an agency rule, ratings standard, or process must be brought using the procedures outlined in Government Code, Chapter 2001, for requesting agency rulemaking or challenging agency rules.

(c) Minimum financial performance required. Continuation of an open-enrollment charter is contingent on the charter holder satisfying generally accepted accounting standards of fiscal management as demonstrated by annual audit reports under §100.1047(c) of this title (relating to Accounting for State Funds) and final investigative audit reports under Chapter 97, Subchapter DD, of this title (relating to Procedures for Investigative Reports and Sanctions).

(1) Standard of required performance. The open-enrollment charter authorizing a charter school that, for three consecutive fiscal years, has unsatisfactory financial performance shall be revoked or non-renewed.

(A) Paragraph (1) of this subsection applies the criteria in subsection (a) of this section to determine the sanction that is normally required for a charter school that has unsatisfactory financial performance for three consecutive fiscal years. Accordingly, the appeal under §100.1021 shall normally be limited to the question whether the charter school did in fact fail to satisfy generally accepted accounting standards of fiscal management for three consecutive fiscal years. Where relevant factors mitigate or aggravate the charter holder's failure to attain this required performance standard, the appeal shall further consider factors described in subsection (g) of this section.

(B) Evidence that the charter holder achieved satisfactory performance under subsection (b), (d), (e), or (f) of this section shall not be considered in mitigation of unsatisfactory performance under this subsection.

(C) Notwithstanding the previous provisions, if the commissioner determines that any unsatisfactory financial performance is both serious and has not been corrected, then that open-enrollment charter school shall be revoked or non-renewed.

(2) Determination of performance. For purposes of this subsection, required minimum financial performance shall be determined as follows.

(A) A charter holder has not satisfied generally accepted accounting standards of fiscal management for a given year where its annual audit report under §100.1047(c) for that year fails to express the unqualified opinion of the certified public accountant preparing the report, reports a material weakness in internal controls, or is filed with the TEA more than 60 days after the deadline specified by TEC, §44.008.

(B) An unsatisfactory financial performance is serious if the unsatisfactory financial performance includes any of the following.

(i) Payment is made in excess of bonafide compensation agreements. The payment of compensation to an individual in excess of the fair market value of the services provided is a serious unsatisfactory financial performance. For purposes of this section, the fair market value of the services rendered shall be based on the individual's education, experience, prior salary history, the job duties actually performed, and what a typical person with similar skills, experience, and job duties would earn.

(ii) Rental or purchase of property is in excess of its fair market value.

(iii) The Annual Audit Report required by TEC, §44.008, is more than 180 days delinquent.

(iv) The charter school received a significant overallocation from the Foundation School Program based on data reported by the charter holder.

(v) The charter school becomes financially insolvent. For purposes of this section "financially insolvent" means that the charter holder has a deficit of net assets.

(vi) The bank account where the foundation school allotments are deposited is subject to a lien, levy, or other garnishment, and that lien, levy, or other garnishment is not removed within 30 days.

(vii) The charter holder's Foundation School Program allotment is subject to a warrant hold and that warrant hold is not removed within 30 days.

(viii) The charter holder loses its eligibility to participate in child nutrition programs for a period of more than 30 days.

(ix) The school's financial auditor issues an adverse opinion regarding the school financial statements or the school's financial auditor disclaims an opinion on the financial statements, and the issue resulting in the adverse or disclaimed opinion involves a significant amount of financial resources that were not properly documented or a material weakness that led to the misallocation of financial resources.

(x) The charter holder exhibits other instances of fiscal mismanagement including, but not limited to, the loss of financial records or a material non-compliance with §109.41 of this title (relating to Financial Accountability System Resource Guide) or related supplement resulting in a significant wasting of financial resources.

(C) Charter holder financial performance will be evaluated in accordance with the following standards.

(i) Step transactions. The commissioner may view the transaction as a whole and may disregard any nonsubstantive intervening transaction taken to achieve the final results.

(ii) Arm's length transaction. A transaction that is described in subparagraph (B) of this paragraph that is the result of an arm's length transaction between completely unrelated parties is only a serious unsatisfactory financial performance if the transaction resulted in a significant wasting of financial resources.

(D) A charter holder has not satisfied generally accepted accounting standards of fiscal management for a given fiscal year when a final investigative audit report on that year under Chapter 97, Subchapter DD, finds material noncompliance with these standards.

(E) Evidence of relevant factors in mitigation or aggravation of the charter holder's failure to satisfy generally accepted accounting standards of fiscal management shall be considered under subsection (g), including evidence that each corrective action required by the TEA has been successfully implemented in a timely manner.

(3) Finality of audits and reports.

(A) Any appeal to a specific audited financial statement or final investigative report must be brought using the procedures provided in Chapter 97, Subchapter DD.

(B) Any challenge to an agency rule, financial standard, audit procedure, or investigative process must be brought using the procedures outlined in Government Code, Chapter 2001, for requesting agency rulemaking or challenging agency rules.

(d) Minimum compliance performance required. Continuation of an open-enrollment charter is contingent on the charter holder's compliance with TEC, Chapter 12, Subchapter D; federal and state laws and rules, financial accountability standards (including student attendance accounting and grant requirements), and data integrity as demonstrated by monitoring reports under TEC, §7.027(a); final investigative reports under Chapter 97, Subchapter DD, and other evidence.

(1) Standard of required performance. The open-enrollment charter authorizing a charter school that has unsatisfactory compliance performance for three consecutive school years shall be revoked or non-renewed.

(A) Paragraph (1) of this subsection applies the criteria in subsection (a) of this section to determine the sanction that is normally required for a charter school that has unsatisfactory compliance performance for three consecutive school years. Accordingly, the appeal under §100.1021 shall normally be limited to the question whether the charter school did in fact fail to demonstrate compliance with TEC, Chapter 12, Subchapter D; federal and state laws and rules; financial accountability (including student attendance accounting and grant requirements); or data integrity for three consecutive years. Where relevant factors mitigate or aggravate the charter holder's failure to attain this required performance standard, the appeal shall further consider factors described in subsection (g) of this section.

(B) Evidence that the charter holder achieved satisfactory performance under subsection (b), (c), (e), or (f) of this section shall not be considered in mitigation of unsatisfactory performance under this subsection.

(2) Determination of performance. For purposes of this subsection, required minimum compliance performance shall be determined as follows.

(A) A charter holder's compliance with TEC, Chapter 12, Subchapter D; federal and state laws and rules; financial accountability standards (including student attendance accounting and grant requirements); or data integrity standards may be determined by applying the applicable standards to the facts as found by TEA monitoring reports under TEC, §7.027(a), or final investigative reports under Chapter 97, Subchapter DD. Such reports establish non-compliance if the facts found therein are not in compliance with these standards. Other evidence may be considered.

(B) Evidence of relevant factors in mitigation or aggravation of the charter holder's non-compliance shall be considered under subsection (g), including evidence that each corrective action required by the TEA has been successfully implemented in a timely manner.

(3) Finality of compliance reports.

(A) Any appeal to a specific monitoring report or final investigative report must be brought using the procedures provided in Chapter 97, Subchapter DD.

(B) Any challenge to an agency rule, compliance standard, monitoring procedure, or investigative process must be brought using the procedures outlined in Government Code, Chapter 2001, for requesting agency rulemaking or challenging agency rules.

(e) Minimum health and safety performance required. Continuation of an open-enrollment charter is contingent on the charter holder protecting the health, safety, and welfare of the students enrolled at the school, as determined by the commissioner under §100.1025 of this title (relating to Intervention Based on Health, Safety, or Welfare of Students) and this subsection or by an official report issued by a federal, state, or local authority with jurisdiction to issue the report.

(1) Standard of required performance. The open-enrollment charter authorizing a charter school that fails to protect the health, safety, or welfare of the students enrolled at its school shall be revoked effective immediately.

(A) Paragraph (1) of this subsection applies the criteria in subsection (a) of this section to determine the sanction that is normally required for a charter school that fails to protect the health, safety, and welfare of the students enrolled at the school. Accordingly, the appeal under §100.1021 shall normally be limited to the question of whether the charter school did in fact fail to protect the health, safety, or welfare of the students enrolled at its school. Where relevant factors mitigate or aggravate the charter holder's failure to attain this required performance standard, the appeal shall further consider factors described in subsection (g) of this section.

(B) Evidence that the charter holder achieved satisfactory performance under subsection (b), (c), (d), or (f) of this section shall not be considered in mitigation of unsatisfactory performance under this subsection.

(2) Determination of performance. For purposes of this subsection, required minimum health and safety performance shall be determined as follows.

(A) A final investigative report under Chapter 97, Subchapter DD, is admissible to prove whether the charter holder failed to protect the health, safety, or welfare of the students enrolled at its school.

(B) An official report issued by a federal, state, or local authority acting within its jurisdiction, as well as hearsay evidence and telephone testimony offered by officials from such authority, are admissible to prove whether the charter holder failed to protect the health, safety, or welfare of the students enrolled at its school.

(C) Documents and testimony considered by the commissioner in making a determination under §100.1025 are admissible to prove whether the charter holder failed to protect the health, safety, or welfare of the students enrolled at its school.

(D) Evidence of relevant factors in mitigation or aggravation of the charter holder's non-compliance shall be considered under subsection (g).

(3) Finality of health and safety reports.

(A) Any appeal to a specific official report issued by a federal, state, or local authority acting within its jurisdiction must be brought using the procedures provided in law for the review of such findings.

(B) Any challenge to an agency rule, compliance standard, monitoring procedure, or investigative process must be brought using the procedures outlined in Government Code, Chapter 2001, for requesting agency rulemaking or challenging agency rules.

(f) Minimum charter performance required. Continuation of an open-enrollment charter is contingent on the charter holder's implementation of and compliance with the terms of its open-enrollment charter as defined by §100.1011(15) of this title (relating to Definitions).

(1) Standard of required performance. The open-enrollment charter authorizing a charter school that commits a material violation of its open-enrollment charter shall be revoked or non-renewed.

(A) Paragraph (1) of this subsection applies the criteria in subsection (a) of this section to determine the sanction that is normally required for a charter school that commits a material violation of its open-enrollment charter. Accordingly, the appeal under §100.1021 shall normally be limited to the questions of whether the charter school did in fact fail to implement or comply with the terms of its open-enrollment charter as defined by §100.1011(15) and whether such charter violation was material. Where relevant factors mitigate or aggravate the charter holder's failure to attain this required performance standard, the appeal shall further consider factors described in subsection (g) of this section.

(B) Evidence that the charter holder achieved satisfactory performance under subsection (b), (c), (d), or (e) of this section shall not be considered in mitigation of unsatisfactory performance under this subsection.

(2) Determination of performance. For purposes of this subsection, required minimum charter performance shall be determined as follows.

(A) A charter holder's compliance with its open-enrollment charter may be determined by applying the charter terms to the facts as found by the TEA monitoring reports under TEC, §7.027(a), or final investigative reports under Chapter 97, Subchapter DD. Such reports establish non-compliance if the facts found therein are not in compliance with these terms. Other evidence may be considered.

(B) A violation of the contract for charter, request for applications (RFA), or other document approved by the State Board of Education (SBOE), or of a condition, amendment, modification, or revision of a charter approved by the commissioner of education is material if it directly violates the purpose of the contract, the RFA, or other documents approved by the SBOE, or a condition, amendment, modification, or revision of the contract.

(C) An open-enrollment charter as defined by §100.1011(15) includes all applicable state and federal laws, rules, and regulations. A violation of such laws, rules, or regulations may be considered both under this subsection and under subsection (b), (c), (d), or (e) of this section, as appropriate.

(D) Evidence of relevant factors in mitigation or aggravation of the charter holder's material charter violation shall be considered under subsection (g), including evidence that each corrective action required by the TEA has been successfully implemented in a timely manner.

(3) Finality of charter violation reports.

(A) Any appeal to a specific final investigative report must be brought using the procedures provided in Chapter 97, Subchapter DD.

(B) Any challenge to an agency rule, compliance standard, monitoring procedure, or investigative process must be brought using the procedures outlined in Government Code, Chapter 2001, for requesting agency rulemaking or challenging agency rules.

(g) Probation and modification; mitigating and aggravating factors.

(1) Revocation or non-renewal normally required. Subsections (b) - (f) of this section apply the criteria in subsection (a) of this section to determine the sanction that is normally required for a charter holder with unsatisfactory performance under these subsections.

(A) The appeal under §100.1021 shall normally be limited to the question of whether the charter holder did in fact fail to achieve a required minimum performance standard as charged in the TEA notice under §100.1021(b).

(B) If a preponderance of the evidence admitted at the hearing establishes that the charter holder failed to achieve the minimum performance standard required by one or more of subsections (b) - (f), then the open-enrollment charter must be revoked or non-renewed unless the commissioner makes each of the findings required by subsection (g)(2) of this section.

(2) Mitigating factors warranting probation or modification. A mitigating factor is a fact or circumstance that does not justify or excuse a failure to achieve the required minimum charter performance, but reduces the degree of culpability for, or harm to the public interest caused by, that failure. The existence of a mitigating factor is an affirmative defense that must be plead by the charter holder under §100.1021 and proven by a preponderance of the evidence.

(A) In a hearing under §100.1021, the charter holder may plead and prove only relevant factors mitigating its failure to attain the required performance standard charged in the TEA notice under §100.1021(b). A "relevant" mitigating factor is one that tends to reduce the degree of culpability of the charter holder for, or harm to the public interest caused by, the specific conduct charged in the TEA notice under §100.1021(b). Evidence that the charter holder achieved acceptable performance on a different standard, such as one required by a different subsection of this section, is not relevant and shall not be considered to mitigate the unacceptable performance charged by the TEA in its notice.

(B) Each of the following findings of fact and conclusions of law must be made for evidence of a mitigating factor to be considered for purposes of reducing the sanction otherwise required by paragraph (1) of this subsection. The charter holder shall bear the burden of proof and the burden of persuasion on each of these findings and conclusions.

(i) The commissioner must find that a preponderance of the evidence admitted at the hearing proves that the charter holder failed to achieve the minimum performance standard required

by a specific subsection of this section, as charged by the TEA notice under §100.1021(b).

(ii) The commissioner must find that a preponderance of the evidence admitted at the hearing proves the existence of one or more mitigating factors that are relevant to the specific conduct found in clause (i) of this subparagraph.

(iii) The commissioner must find that the mitigating factors found in clause (ii) of this subparagraph reduce the degree of culpability of the charter holder for, or harm to the public interest caused by, the specific conduct found in clause (i) of this subparagraph to such an extent that they warrant consideration of a lesser sanction.

(iv) The commissioner must find that the public policy interest in deterring similar conduct by the charter holder, and similar conduct by other charter holders, in the future is clearly outweighed by the mitigating factors found in clause (ii).

(v) The commissioner must find that no aggravating factors under paragraph (4) of this subsection increase the degree of culpability of the charter holder for, or harm to the public interest caused by, the specific conduct found in clause (i) to such an extent that they preclude consideration of a lesser sanction.

(vi) The commissioner must find that the root causes of the conduct found in clause (i) have been fully disclosed by the evidence at trial, and can successfully be remedied through either specific modifications to the open-enrollment charter or specific probationary terms.

(vii) The commissioner must enter findings explaining how the probationary terms and/or charter modifications will remedy each of the root causes of the conduct found in clause (i) and provide sufficient deterrence to prevent similar conduct by the charter holder and by other charter holders in the future.

(C) Mitigating factors include, but are not limited to the following.

(i) The charter holder complied successfully with all TEA-imposed corrective actions relating to the problem in a timely manner.

(ii) The charter holder has no prior history of similar problems.

(iii) The charter holder has no subsequent history of similar problems and a substantial amount of time has passed since the problem occurred.

(iv) The charter holder has successfully remedied the problem without TEA intervention and taken effective measures to prevent its recurrence.

(3) Mitigating factors plead by the TEA. Notwithstanding paragraph (1) of this subsection, the TEA may, in its notice of intent or other instrument, specifically request probation or modification in lieu of revocation or non-renewal of the open-enrollment charter held by a charter holder. In such a case, the TEA shall state the specific probationary terms and/or modifications it requests, and the charter holder shall state the specific probationary terms and/or modifications to which it objects and the basis for its objections. Paragraph (2) of this subsection shall apply to the disputed probationary terms and/or modifications, but the undisputed terms and modifications may be made without the specific findings required by that paragraph.

(4) Aggravating factors precluding probation or modification. An aggravating factor is a fact or circumstance that increases the degree of culpability for, or harm to the public interest caused by, a failure to achieve the required minimum charter performance. The existence of an aggravating factor must be plead by the TEA under §100.1021 and proven by a preponderance of the evidence. An aggravating factor found under subparagraph (B) of this paragraph shall preclude a lesser sanction that would otherwise be available under paragraph (2) of this subsection.

(A) In a hearing under §100.1021, the TEA may plead and prove only relevant factors aggravating the charter holder's failure to attain the required performance standard charged in the TEA notice under §100.1021(b). A "relevant" aggravating factor is one that tends to increase the degree of culpability of the charter holder for, or harm to the public interest caused by, the specific conduct charged in the TEA notice under §100.1021(b). Evidence that the charter holder achieved unacceptable performance on a different standard, such as one required by a different subsection of this section, is not relevant and shall not be considered to aggravate the unacceptable performance charged by the TEA in its notice.

(B) Each of the following findings of fact and conclusions of law must be made for evidence of an aggravating factor to be considered for purposes of precluding a sanction otherwise available under paragraph (2) of this subsection. The charter holder shall bear the burden of proof and the burden of persuasion on each of these findings and conclusions.

(i) The commissioner must find that a preponderance of the evidence admitted at the hearing proves that the charter holder failed to achieve the minimum performance standard required by a specific subsection of this section, as charged by the TEA notice under §100.1021(b).

(ii) The commissioner must find that a preponderance of the evidence admitted at the hearing proves the existence of one or more aggravating factors that are relevant to the specific conduct found in clause (i) of this subparagraph.

(iii) The commissioner must find that the aggravating factors found in clause (ii) of this subparagraph increase the degree of culpability of the charter holder for, or harm to the public interest caused by, the specific conduct found in clause (i) of this subparagraph to such an extent that they preclude a lesser sanction otherwise available under paragraph (2) of this subsection.

(C) Aggravating factors include the following.

(i) The charter holder failed to timely comply with TEA-imposed corrective actions relating to the problem.

(ii) The charter holder has a prior history of similar problems.

(iii) The charter holder has a subsequent history of similar problems.

(iv) The charter holder failed to take effective measures to correct the problem, and a significant time has passed since it occurred.

(v) The charter holder or its management company failed to cooperate with TEA audits, monitoring, or investigations relating to the problem, as required by §100.1029 of this title (relating to Agency Audits, Monitoring, and Investigations).

(vi) The charter holder or its management company failed to cooperate with TEA interventions and sanctions relating to the problem, as required by §100.1027 of this title (relating to Accreditation Sanctions).

(vii) The charter holder or its management company falsified public records, destroyed public records, or failed to maintain

public records as required by §100.1203 of this title (relating to Records Management).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 475-1497

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DIVISION 3. CHARTER SCHOOL FUNDING AND FINANCIAL OPERATIONS

19 TAC §§100.1041, 100.1043, 100.1051

The amendments are adopted under the Texas Education Code, Chapter 12, Subchapter D, which authorizes the commissioner of education to adopt rules and procedures related to the implementation of open-enrollment charter schools.

The amendments implement the Texas Education Code, §§12.106, 12.1061, 12.107, and 12.1163.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Education Agency
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For further information, please call: (512) 475-1497

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DIVISION 5. CHARTER SCHOOL GOVERNANCE

19 TAC §§100.1101 - 100.1104, 100.1111, 100.1131, 100.1151

The amendments are adopted under the Texas Education Code, Chapter 12, Subchapter D, which authorizes the commissioner of education to adopt rules and procedures related to the implementation of open-enrollment charter schools. TEC, §12.123, authorizes the commissioner to adopt rules prescribing training for members of governing bodies and officers of open-enrollment charter schools.

The amendments implement the Texas Education Code, §§12.1012, 12.1054, 12.1163, 12.120, and 12.123.

§100.1102. Training for Members of Governing Bodies of Charter Holder and School.

(a) Training required. Unless exempted under subsection (g) or (h) of this section, a member of the governing body of a charter holder or a member of the governing body of a charter school must complete a training course consisting of 12 instructional hours, excluding breaks, administrative tasks, and other non-instructional time, delivered by a course provider registered under §100.1107 of this title (relating to Course Providers). The training course may not use self-instructional materials, unless as otherwise provided.

(b) Timeline for completing training. Except as provided in subsection (c) of this section, a member of the governing body of a charter holder or a member of the governing body of a charter school must complete the training course required by this section within one calendar year of appointment or election to such governing body.

(c) Transition timeline. A member serving on the governing body of a charter holder or the governing body of a charter school on the effective date of this section must complete at least the first six hours of the training course required by this section within six months of the effective date of the curriculum outline approved under subsection (e) of this section, and must complete the remaining six hours of such training within one year of the effective date of the approved curriculum outline. Training completed prior to the effective date of this section and after September 1, 2001, may be counted toward the first six hours of the training course required by this section if it meets the requirements of the curriculum outline approved under subsection (e).

(d) Course content. The training course required by this section shall include the following modules, which accounts for 540 minutes (nine hours) of the required 12 hours. The remaining 180 minutes (three hours) of the required 12 hours may be selected from any of these modules:

(1) a module consisting of at least 150 minutes of instruction in basic school law, with special emphasis on corporate director duties and liabilities, non-delegable duties, nepotism, conflicts of interest, management companies, and the legal requirements specific to members of the governing body of a charter holder;

(2) a module consisting of at least 60 minutes of instruction in basic school finance, with special emphasis on accounting for public funds and property, student attendance accounting, federal funds and property management, grant administration, audit requirements, and the financial duties specific to the members of the governing body of a charter holder;

(3) a module consisting of at least 30 minutes of instruction in health and safety issues, with special emphasis on health and safety codes, ordinances, and other laws applicable to operating a Texas public school; student discipline; and safe schools;

(4) a module consisting of at least 120 minutes of instruction in accountability requirements related to the use of public funds, with special emphasis on the duties and liabilities of a trustee under Texas law, the shared use of real property for charter and non-charter business, bank depository contracts, capital financing, incidental use of public property by charter holder personnel, and recovery by the commissioner of education of the public property held by a former charter holder;

(5) a module consisting of at least 60 minutes of instruction in other requirements relating to accountability to the public, with special emphasis on the administration of statewide assessments; student, staff, financial, and organizational data reporting; dropout reporting; statewide standards for acceptable student performance; charter-specific standards for acceptable student performance; accountability ratings and sanctions under Texas Education Code (TEC), Chapter 39; and

the role of student performance in adverse actions under TEC, §12.116 and §12.1162;

(6) a module consisting of at least 60 minutes of instruction in open meetings requirements under Government Code, Chapter 551, with special emphasis on posting the agenda, executive sessions, accessibility of the meeting location to the public, employee board members, and civil and criminal sanctions; and

(7) a module consisting of at least 60 minutes of instruction in requirements relating to public records, with special emphasis on the Public Information Act, the Records Retention Act, confidential student records, records in the possession of a management company, and other duties respecting public records.

(e) Required course curriculum outline. The commissioner shall approve and disseminate a curriculum outline that is consistent with the module topics and minimum durations identified in subsection (d) of this section. Training that does not conform to the curriculum outline does not satisfy the training requirements of this section. The entire duration of the training course must be dedicated to topics identified in the curriculum outline. The curriculum outline will be available on the Texas Education Agency (TEA) website. The process for the development and/or revision of a curriculum outline under this section must include an opportunity for stakeholder comment.

(f) Continuing training. A member serving on the governing body of a charter holder or the governing body of a charter school who has completed the 12-hour training course required by this section must annually thereafter receive six hours of training, excluding breaks, administrative tasks, and other non-instructional time, delivered by a course provider registered under §100.1107 of this title. However, a member of the governing body of a charter holder whose organization has operated charters that are all rated "Acceptable" or higher for at least two out of three of the most recent ratings or a member of the governing body of a charter school whose school has been rated "Acceptable" or higher for at least two out of three of the most recent ratings may take any training that is documented by the provider and that applies to the achievement of the charter's academic mission and/or fulfillment of its responsibilities and/or accountabilities under the law. Furthermore, a board chair or vice chair may opt to train the remaining board members in such subjects as best fits the needs of the school or schools, provided the chair or vice chair has taken the initial 12 hours otherwise required under these rules. Continuing training under this subsection shall fulfill assessed training needs, including any training needs identified by TEA monitoring, and address update items identified in the curriculum outline approved under subsection (e) as well as additional topics selected from the curriculum outline. Selected topics must be covered in greater depth than the curriculum outline indicates for initial training on those topics. With the exception of members of the governing body of a charter holder whose organization has operated campuses that are all rated "Acceptable" or higher for at least two out of three of the most recent ratings, or a member of the governing body of a charter school whose school has been rated "Acceptable" or higher for at least two out of three of the most recent ratings, no individual may use self-instructional materials for more than one hour of continuing training. Twenty-five percent of hours earned in excess of the requirements set forth in this subsection by a member serving on the governing body of a charter holder or the governing body of a charter school may be carried over to meet the following year's requirement under this section.

(g) Exemptions. A member of the governing body of a charter holder who serves on the governing body of a governmental entity or an institution of higher education as defined under TEC, §61.003, is exempt from the training required by this section if, by virtue of such service, the member is subject to other mandatory training and the members of the governing body of the charter school operated by the charter holder comply with this section.

(h) Limited exemptions. A member of the governing body of a charter holder whose organization has operated campuses that are all rated "Acceptable" or higher for at least two out of three of the most recent ratings, or a member of the governing body of a charter school whose campuses have all been rated "Acceptable" or higher for at least two out of three of the most recent ratings shall be subject to the requirements in paragraphs (1) - (5) of this subsection in lieu of those specified in subsections (a) and (d) of this section. For organizations that meet the requirements for this exception, the required amount of training is eight hours. The training courses required by this section shall include the following modules as provided in paragraphs (1) - (5) of this subsection, which account for 360 minutes (six hours) of the required eight hours. The remaining 120 minutes (two hours) of the required eight hours may be selected from any of the following modules, and can consist of self study:

(1) a module consisting of at least 60 minutes of instruction in basic school law, with special emphasis on corporate director duties and liabilities, non-delegable duties, nepotism, conflicts of interest, management companies, and the legal requirements specific to members of the governing body of a charter holder;

(2) a module consisting of at least 60 minutes of instruction in basic school finance, with special emphasis on accounting for public funds and property, student attendance accounting, federal funds and property management, grant administration, audit requirements, and the financial duties specific to the members of the governing body of a charter holder;

(3) a module consisting of at least 30 minutes of instruction in health and safety issues, with special emphasis on health and safety codes, ordinances, and other laws applicable to operating a Texas public school; student discipline; and safe schools;

(4) a module consisting of at least 90 minutes of instruction in accountability requirements related to the use of public funds, with special emphasis on the duties and liabilities of a trustee under Texas law, the shared use of real property for charter and non-charter business, bank depository contracts, capital financing, incidental use of public property by charter holder personnel, and recovery by the commissioner of education of the public property held by a former charter holder;

(5) a module consisting of at least 120 combined minutes of instruction in the following:

(A) other requirements relating to accountability to the public, with special emphasis on the administration of statewide assessments; student, staff, financial, and organizational data reporting; dropout reporting; statewide standards for acceptable student performance; charter-specific standards for acceptable student performance; accountability ratings and sanctions under Texas Education Code (TEC), Chapter 39; and the role of student performance in adverse actions under TEC, §12.116 and §12.1162;

(B) instruction in open meetings requirements under Government Code, Chapter 551, with special emphasis on posting the agenda, executive sessions, accessibility of the meeting location to the public, employee board members, and civil and criminal sanctions; and

(C) instruction in requirements relating to public records, with special emphasis on the Public Information Act, the Records Retention Act, confidential student records, records in the possession of a management company, and other duties respecting public records.

§100.1103. Training for Chief Executive and Central Administrative Officers.

(a) Training required. Unless exempted under subsection (g) or (h) of this section, a chief executive officer or a central administrative officer, including persons providing management services that include the functions of a chief executive officer or central administrative officer, must complete a training course consisting of 30 instructional hours, excluding breaks, administrative tasks, and other non-instructional time, delivered by a course provider registered under §100.1107 of this title (relating to Course Providers). The training course may not use self-instructional materials, unless as otherwise provided.

(b) Timeline for completing training. Except as provided in subsection (c) of this section, a chief executive officer or a central administrative officer must complete the training course required by this section within one calendar year of beginning service in that capacity.

(c) Transition timeline. A person serving as a chief executive officer or central administrative officer on the effective date of this section must complete at least the first 15 hours of the training course required by this section within six months of the effective date of the curriculum outline approved under subsection (e) of this section, and must complete the remaining 15 hours of such training within one year of the effective date of the approved curriculum outline. Training completed prior to the effective date of this section and after September 1, 2001, may be counted toward the first 15 hours of the training course required by this section if it meets the requirements of the curriculum outline approved under subsection (e).

(d) Course content. The training course required by this section shall include the following modules, which accounts for 1,260 minutes (21 hours) of the required 30 hours. The remaining 540 minutes (nine hours) of the required 30 hours may be selected from any of these modules:

(1) a module consisting of at least 240 minutes of instruction in school law, with special emphasis on TEC, Chapter 12, Subchapter D, and this subchapter;

(2) a module consisting of at least 240 minutes of instruction in school finance, with special emphasis on accounting for public funds and property, student attendance accounting, federal funds and property management, grant administration, audit requirements, and capital financing;

(3) a module consisting of at least 120 minutes of instruction in health and safety issues, with special emphasis on health and safety codes, ordinances, and other laws applicable to operating a Texas public school; student discipline; and safe schools;

(4) a module consisting of at least 240 minutes of instruction in accountability requirements related to the use of public funds, with special emphasis on the duties and liabilities of a trustee under Texas law, the shared use of real property for charter and non-charter business, bank depository contracts, capital financing, incidental use of public property by charter holder personnel, and recovery by the commissioner of education of the public property held by a former charter holder;

(5) a module consisting of at least 240 minutes of instruction in other requirements relating to accountability to the public, with special emphasis on the administration of statewide assessments; student, staff, financial, and organizational data reporting; dropout reporting; statewide standards for acceptable student performance; charter-specific standards for acceptable student performance; accountability ratings and sanctions under TEC, Chapter 39; and the role of student performance in adverse actions under TEC, §12.116 and §12.1162;

(6) a module consisting of at least 60 minutes of instruction in open meetings requirements under Government Code, Chapter 551, with special emphasis on posting the agenda, executive sessions, accessibility of the meeting location to the public, employee board members, and civil and criminal sanctions; and

(7) a module consisting of at least 120 minutes of instruction in requirements relating to public records, with special emphasis on the Public Information Act, the Records Retention Act, confidential student records, records in the possession of a management company, and other duties respecting public records.

(e) Required course curriculum outline. The commissioner shall approve and disseminate a curriculum outline that is consistent with the module topics and minimum durations identified in subsection (d) of this section. Training that does not conform to the curriculum outline does not satisfy the training requirements of this section. The entire duration of the training course must be dedicated to topics identified in the curriculum outline. The curriculum outline will be available on the Texas Education Agency (TEA) website. The process for the development and/or revision of a curriculum outline under this section must include an opportunity for stakeholder comment.

(f) Continuing training. A chief executive officer or a central administrative officer who has completed the 30-hour training course required by this section must annually thereafter receive 15 hours of training, excluding breaks, administrative tasks, and other non-instructional time, delivered by a course provider registered under §100.1107 of this title. However, a chief executive or central administrative officer whose organization has operated charters that are all rated "Acceptable" or higher for at least two out of three of the most recent ratings may take any training that is documented by the provider and that applies to the achievement of the charter's academic mission and/or fulfillment of its responsibilities and/or accountabilities under the law. Continuing training under this subsection shall fulfill assessed training needs, including any training needs identified by TEA monitoring, and address update items identified in the curriculum outline approved under subsection (e) as well as additional topics selected from the curriculum outline. Selected topics must be covered in greater depth than the curriculum outline indicates for initial training on those topics. With the exception of the chief executive or central administrative officers of a charter holder whose organization has operated campuses that are all rated "Acceptable" or higher for at least two out of three of the most recent ratings, no individual may use self-instructional materials for more than three hours of continuing training. Twenty-five percent of hours earned by a chief executive officer or a central administrative officer in excess of the requirements set forth in this subsection may be carried over to meet the following year's requirement under this section.

(g) Exemptions. A central administrative officer is exempt from the training required by this section if the person is the holder in good standing of a Standard Superintendent Certificate, or its lifetime equivalent, issued by the State Board for Educator Certification and all other officers of the charter school comply with this division.

(h) Limited exemptions. A chief executive or central administrative officer whose organization has operated campuses that are all rated "Acceptable" or higher for at least two out of three of the most recent ratings shall be subject to the requirements in paragraphs (1) - (5) of this subsection in lieu of those specified in subsections (a) and (d) of this section. For organizations that meet the requirements for this exception, the required amount of training is 21 hours. The training course required by this section shall include the following modules, which accounts for 1,140 minutes (19 hours) of the required 21 hours. The remaining 120 minutes (two hours) of the required 21 hours may be selected from any of the following modules, and can consist of self-study:

(1) a module consisting of at least 210 minutes of instruction in school law, with special emphasis on TEC, Chapter 12, Subchapter D, and this subchapter;

(2) a module consisting of at least 210 minutes of instruction in school finance, with special emphasis on accounting for public funds and property, student attendance accounting, federal funds and property management, grant administration, audit requirements, and capital financing;

(3) a module consisting of at least 270 combined minutes of instruction in the following:

(A) health and safety issues, with special emphasis on health and safety codes, ordinances, and other laws applicable to operating a Texas public school; student discipline; and safe schools;

(B) open meetings requirements under Government Code, Chapter 551, with special emphasis on posting the agenda, executive sessions, accessibility of the meeting location to the public, employee board members, and civil and criminal sanctions; and

(C) requirements relating to public records, with special emphasis on the Public Information Act, the Records Retention Act, confidential student records, records in the possession of a management company, and other duties respecting public records;

(4) a module consisting of at least 210 minutes of instruction in accountability requirements related to the use of public funds, with special emphasis on the duties and liabilities of a trustee under Texas law, the shared use of real property for charter and non-charter business, bank depository contracts, capital financing, incidental use of public property by charter holder personnel, and recovery by the commissioner of education of the public property held by a former charter holder; and

(5) a module consisting of at least 240 minutes of instruction in other requirements relating to accountability to the public, with special emphasis on the administration of statewide assessments; student, staff, financial, and organizational data reporting; dropout reporting; statewide standards for acceptable student performance; charter-specific standards for acceptable student performance; accountability ratings and sanctions under TEC, Chapter 39; and the role of student performance in adverse actions under TEC, §12.116 and §12.1162.

§100.1104. Training for Campus Administrative Officers.

(a) Training required. Unless exempted under subsection (g) of this section, a campus administrative officer, including persons providing management services that include the functions of a campus administrative officer, must complete a training course consisting of 10 instructional hours, excluding breaks, administrative tasks, and other non-instructional time, delivered by a course provider registered under §100.1107 of this title (relating to Course Providers). The training course may not use self-instructional materials.

(b) Timeline for completing training. Except as provided in subsection (c) of this section, a campus administrative officer must complete the training course required by this section within one calendar year of beginning service in that capacity.

(c) Transition timeline. A person serving as a campus administrative officer on the effective date of this section must complete at least the first five hours of the training course required by this section within six months of the effective date of the curriculum outline approved under subsection (e) of this section, and must complete the remaining five hours of such training within one year of the effective date of the approved curriculum outline. Training completed prior to the effective date of this section and after September 1, 2001, may be counted toward the first five hours of the training course required by this section if it meets the requirements of the curriculum outline approved under subsection (e).

(d) Course content. The training course required by this section shall include the following modules (120 minutes (two hours) of the required 10 hours may be selected from any of these modules):

(1) a module consisting of at least 90 minutes of instruction in school law, with special emphasis on TEC, Chapter 12, Subchapter D; this subchapter; students with disabilities; student records; student admissions; geographic boundaries; and residency;

(2) a module consisting of at least 60 minutes of instruction in school finance, with special emphasis on student attendance accounting, federal funds and property management, and grant administration;

(3) a module consisting of at least 90 minutes of instruction in health and safety issues, with special emphasis on health and safety codes, ordinances, and other laws applicable to operating a Texas public school; student discipline; and safe schools;

(4) a module consisting of at least 30 minutes of instruction in accountability requirements related to the use of public funds, with special emphasis on incidental use of public property by charter holder personnel;

(5) a module consisting of at least 120 minutes of instruction in other requirements relating to accountability to the public, with special emphasis on the administration of statewide assessments; student, staff, financial, and organizational data reporting; and dropout reporting;

(6) a module consisting of at least 30 minutes of instruction in open meetings requirements under Government Code, Chapter 551, with special emphasis on employee board members; and

(7) a module consisting of at least 60 minutes of instruction in requirements relating to public records, with special emphasis on confidential student records.

(e) Required course curriculum outline. The commissioner of education shall approve and disseminate a curriculum outline that is consistent with the module topics and minimum durations identified in subsection (d) of this section. Training that does not conform to the curriculum outline does not satisfy the training requirements of this section. The entire duration of the training course must be dedicated to topics identified in the curriculum outline. The curriculum outline will be available on the Texas Education Agency (TEA) website. The process for the development and/or revision of a curriculum outline under this section must include an opportunity for stakeholder comment.

(f) Continuing training. A campus administrative officer who has completed the 10-hour training course required by this section must annually thereafter receive five hours of training, excluding breaks, administrative tasks, and other non-instructional time, delivered by a course provider registered under §100.1107 of this title. However, a school officer whose school has been rated "Acceptable" or higher for at least two out of three of the most recent ratings may take any training that is documented by the provider and that applies to the achievement of the charter's academic mission and/or fulfillment of its responsibilities and/or accountabilities under the law. Continuing training under this subsection shall fulfill assessed training needs, including any training needs identified by TEA monitoring, and address update items identified in the curriculum outline approved under subsection (e) as well as additional topics selected from the curriculum outline. Selected topics must be covered in greater depth than the curriculum outline indicates for initial training on those topics. With the exception of campus administrative officers of a charter holder whose organization has operated campuses that are all rated "Acceptable" or higher for at least two

out of three of the most recent ratings, no individual may use self-instructional materials for more than 30 minutes of continuing training. Twenty-five percent of hours earned in excess of the requirements set forth in this subsection by a campus administrative officer may be carried over to meet the following year's requirement under this section.

(g) Exemptions. A campus administrative officer is exempt from the training required by this section if the person is the holder in good standing of a Standard Principal Certificate, or its lifetime equivalent, issued by the State Board for Educator Certification, and all other officers of the charter school comply with this division.

§100.1111. Applicability of Nepotism Provisions; Exception for Acceptable Performance.

(a) Nepotism laws generally apply. Except as provided by this section, a member of the governing body of a charter holder, a member of the governing body of a charter school, and an officer of a charter school shall comply with Government Code, Chapter 573, in the manner provided by the nepotism provisions, prohibitions, and exceptions described in §§100.1111 - 100.1116 of this division.

(b) Satisfactory student performance. If each charter school operated by a charter holder has received a satisfactory rating, as defined by §100.1022(b)(2)(B) of this title (relating to Standards for Adverse Action on an Open-Enrollment Charter), for at least two of the preceding three school years, then that charter holder may comply with subsection (e) of this section in lieu of complying with §§100.1111 - 100.1116 of this division.

(c) Existing charter holders partly grandfathered. If a charter holder has operated at least one charter school which reported attendance that occurred prior to September 2, 2001, but no charter school operated by the charter holder has received a sufficient number of substantive ratings to determine whether it has received a satisfactory rating for at least two of the preceding three school years, then the charter holder may comply with subsection (e) of this section in lieu of compliance with §§100.1111 - 100.1116 of this division.

(1) For purposes of this subsection, a "substantive rating" is defined by §100.1022(b)(2).

(2) For purposes of this subsection, a charter school has received a sufficient number of substantive ratings to determine whether it has received a satisfactory rating for at least two of the preceding three school years if:

(A) the charter school has received two consecutive substantive ratings, and neither rating meets the criteria set forth in subsection (b) of this section; or

(B) the charter school has received three substantive ratings.

(3) If a charter holder operates charter schools that have received a sufficient number of substantive ratings to determine whether it has received a satisfactory rating for at least two of the preceding three school years, but also operates charter schools that have not received a sufficient number of substantive ratings, then its eligibility to comply with subsection (e) of this section is determined by applying the criteria in subsection (b) of this section only to those schools with a sufficient number of substantive ratings.

(d) No annual ratings assigned. For purposes of this section, two substantive ratings are "consecutive" as determined by §100.1022(b)(2).

(e) Exception to nepotism. A member of the governing body of a charter holder subject to this subsection, and a member of the governing body or officer of each charter school operated by such charter holder, shall comply with §100.1133 of this title (relating to Conflicts Requiring Affidavit and Abstention From Voting) and §100.1134 of this title (relating to Conflicts Requiring Separate Vote on Budget), with respect to a personnel matter concerning a person related to the member or officer within the third degree by consanguinity or within the second degree by affinity, as if the personnel matter were a transaction with a business entity requiring compliance with §100.1133 and §100.1134.

(f) No quorum of relatives. Notwithstanding any other provision of this section, persons related to one another within the third degree by consanguinity or within the second degree by affinity, as determined under §100.1113 of this title (relating to Relationships by Consanguinity or by Affinity), shall not constitute a quorum of the governing body or any committee of the governing body of the charter holder or charter school.

(g) Compliance following ratings change. Notwithstanding this section, a charter holder must comply with the nepotism provisions, prohibitions, and exceptions described in §§100.1111 - 100.1116 of this division within 60 days after it is assigned a rating that causes it to become ineligible for the exception provided by subsection (e) of this section.

(1) Subject to paragraph (2) of this subsection, if a ratings appeal is provided in the applicable accountability manual, and if a timely and sufficient appeal is filed by the charter holder, then the time for compliance provided by this subsection is extended until 30 days after the date on which the appeal is finally determined.

(2) Notwithstanding any other deadline, an appeal is "timely" for purposes of the extension of time provided in paragraph (1) of this subsection if it is received by the appeals deadline specified in the relevant Accountability Manual, or under the alternative education accountability ratings procedures, if applicable.

§100.1131. Conflicts of Interest and Board Member Compensation; Exception.

(a) Process governing conflicts of interest. A member of the governing body of a charter holder, a member of the governing body of a charter school, and an officer of a charter school shall comply with Local Government Code, Chapter 171, in the manner provided by the conflict of interest provisions described in §§100.1131 - 100.1135 of this division.

(b) Compensated board members generally prohibited. Except as provided by this section, a person who receives compensation or remuneration from a nonprofit corporation holding an open-enrollment charter may not serve on the governing body of the charter holder. As used in this subsection, compensation or remuneration includes, without limitation:

(1) salary, bonuses, benefits, or other compensation received by the local public official pursuant to an employment relationship;

(2) payment of or reimbursement for personal expenses of the local public official, excluding reimbursement for allowable travel expenses;

(3) credit extended to the local public official by the charter holder or charter school;

(4) the local public official's personal use of property paid for by the charter holder or charter school;

(5) in-kind transfers of property to the local public official; and

(6) all other forms of compensation or remuneration to the local public official.

(c) Satisfactory student performance. If each charter school operated by a charter holder has received a satisfactory rating, as defined by §100.1022(b)(2)(B) of this title (relating to Standards for Adverse Action on an Open-Enrollment Charter), for at least two of the preceding three school years, then charter school employees may serve on the governing body of the charter holder in accordance with subsection (f) of this section.

(d) Existing charter holders partly grandfathered. If a charter holder has operated at least one charter school which reported attendance that occurred prior to September 2, 2001, but no charter school operated by the charter holder has received a sufficient number of substantive ratings to determine whether it has received a satisfactory rating for at least two of the preceding three school years, then charter school employees may serve on the governing body of the charter holder in accordance with subsection (f) of this section.

(1) For purposes of this subsection, a "substantive rating" is defined by §100.1022(b)(2).

(2) For purposes of this subsection, a charter school has a sufficient number of substantive ratings to determine whether it has received a satisfactory rating for at least two of the preceding three school years if:

(A) the charter school has received two consecutive substantive ratings, and neither rating meets the criteria set forth in subsection (c) of this section; or

(B) the charter school has received three substantive ratings.

(3) If a charter holder operates charter schools that have received a sufficient number of substantive ratings to determine whether it has received a satisfactory rating for at least two of the preceding three school years, but also operates charter schools that have not received a sufficient number of substantive ratings, then its eligibility to comply with subsection (f) of this section is determined by applying the criteria in subsection (c) of this section only to those schools with a sufficient number of substantive ratings.

(e) No annual ratings assigned. For purposes of this section, two substantive ratings are "consecutive" as determined by §100.1022(b)(2).

(f) Exception to prohibition on compensated board members. Notwithstanding subsection (b) of this section, an employee of a charter school subject to this subsection may serve as a member of the governing body of the charter holder if:

(1) only employees of the charter school, and not employees of the charter holder, serve on the governing body of the charter holder;

(2) the only compensation or remuneration received by the board member is salary, bonuses, benefits, or other compensation received pursuant to the employment relationship with the charter school;

(3) charter school employees do not constitute a quorum of the governing body or any committee of the governing body; and

(4) all charter school employees serving on the governing body comply with all conflict of interest provisions referenced in subsection (a) of this section.

(g) Accounting for interested transactions. Notwithstanding compliance with this section, a charter holder shall comply fully with the requirements of §100.1047(f) of this title (relating to Accounting for State Funds).

(h) Compliance following ratings change. Notwithstanding this section, a charter holder must comply with the prohibition on compensated board members described in subsection (b) of this section within 30 days after it is assigned a rating that causes it to become ineligible for the exception provided by subsection (f) of this section.

(1) Subject to paragraph (2) of this subsection, if a ratings appeal is provided in the applicable accountability manual, and if a timely and sufficient appeal is filed by the charter holder, then the time for compliance provided by this subsection is extended until 30 days after the date on which the appeal is finally determined.

(2) Notwithstanding any other deadline, an appeal is "timely" for purposes of the extension of time provided in paragraph (1) of this subsection if it is received by the appeals deadline specified in the relevant Accountability Manual, or under the alternative education accountability ratings procedures, if applicable.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 6. CHARTER SCHOOL OPERATIONS

19 TAC §§100.1201, 100.1207, 100.1209, 100.1211

The amendments are adopted under the Texas Education Code, Chapter 12, Subchapter D, which authorizes the commissioner of education to adopt rules and procedures related to the implementation of open-enrollment charter schools.

The amendments implement the Texas Education Code, §§12.103, 12.104, 12.111, 12.117, and 12.129.

§100.1207. Student Admission.

(a) Application deadline. For admission to a charter school, a charter holder shall:

(1) require the applicant to complete and submit an application not later than a reasonable deadline the charter holder establishes; and

(2) on receipt of more acceptable applications for admission under this section than available positions in the school:

(A) except as permitted by subsection (b) of this section, fill the available positions by lottery; or

(B) subject to subsection (c) of this section, fill the available positions in the order in which all timely applications were received.

(b) Lottery exemption. The charter holder may exempt students from the lottery required by subsection (a) of this section to the extent this is consistent with the definition of a "public charter school" under the No Child Left Behind Act of 2001, P.L. 107-110, §5210 (NCLB), as interpreted by the United States Department of Education (USDE).

(c) Newspaper publication. To the extent this is consistent with the definition of a "public charter school" under the NCLB, as interpreted by the USDE, a charter holder may fill applications for admission under subsection (a)(2)(B) of this section only if it published a notice of the opportunity to apply for admission to the charter school. A notice published under this subsection must:

(1) state the application deadline; and

(2) be published in a newspaper of general circulation in the community in which the school is located not later than the seventh day before the application deadline.

(d) Student admission and enrollment. The governing body of the charter holder must adopt a student admission and enrollment policy that:

(1) prohibits discrimination on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend under state law; and

(2) specifies any type of non-discriminatory enrollment criteria to be used at each charter school operated by the charter holder. Such non-discriminatory enrollment criteria may make the student ineligible for enrollment based on a history of a criminal offense, a juvenile court adjudication, or discipline problems under Texas Education Code, Chapter 37, Subchapter A, documented as provided by local policy.

(e) Maximum enrollment; transfers. Total enrollment shall not exceed the maximum number of students approved in the open-enrollment charter. Students who reside outside the geographic boundaries stated in the open-enrollment charter shall not be admitted to the charter school until all eligible applicants who reside within the boundaries and have submitted a timely application have been enrolled. Then, if the open-enrollment charter so provides, the charter holder may admit transfer students to the charter school in accordance with the terms of the open-enrollment charter.

§100.1211. Students.

(a) Student performance. Notwithstanding any provision in an open-enrollment charter, acceptable student performance under Texas Education Code, §12.111(3), shall at a minimum require student performance meeting the standards for an "Acceptable" rating as determined by the commissioner of education under the relevant Accountability Manual, or under the alternative education accountability rating procedures, if applicable.

(b) Reporting child abuse or neglect. A charter holder shall adopt and disseminate to all charter school staff and volunteers a policy governing child abuse reports required by Texas Family Code, Chapter 261. The policy shall require that employees, volunteers, or agents of the charter holder and the charter school report child abuse or neglect directly to an appropriate entity listed in Texas Family Code, Chapter 261.

(c) Notice of expulsion or withdrawal. A charter holder shall notify the school district in which the student resides within three business days of any action expelling or withdrawing a student from the charter school.

(d) Data reporting. A charter holder shall report timely and accurate information required by the commissioner to the Texas Education Agency, except as expressly waived by the commissioner.

(e) Scholastic year. A charter holder shall adopt a school year for the charter school, with fixed beginning and ending dates.

(f) Minimum teacher qualifications. To the extent that federal law applies, a person employed as an educator by a charter school must meet requirements of federal law. If federal law defers to state standards, then the standard set out in Texas Education Code, §12.129, applies. A high school equivalency certificate is not a high school diploma for purposes of Texas Education Code, §12.129; however, a person who has a high school equivalency certificate and also holds a college degree satisfies the requirement of Texas Education Code, §12.129.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
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For further information, please call: (512) 475-1497

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CHAPTER 111. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR MATHEMATICS

SUBCHAPTER B. MIDDLE SCHOOL

19 TAC §§111.22 - 111.24

The State Board of Education (SBOE) adopts amendments to §§111.22 - 111.24, concerning the Texas Essential Knowledge and Skills (TEKS) for mathematics. The amendments are adopted without changes to the proposed text as published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11523) and will not be republished. The sections establish the curriculum standards for middle school mathematics, Grades 6 - 8. The adopted amendments refine and align secondary mathematics TEKS. Amendments to high school mathematics TEKS are also adopted in this issue.

Following a November 2003 directive from the SBOE to provide a schedule for reviewing the TEKS, Texas Education Agency (TEA) staff proposed a 2004 - 2005 TEKS review calendar. The TEKS review process will follow the same timeline as the textbook adoption process, as appropriate. The SBOE issued Proclamation 2004 in May 2004, calling for instructional materials in the area of secondary mathematics.

TEA staff proceeded with the review process for the secondary mathematics TEKS in the areas of: mathematics, Grades 6 - 8 (including Grade 6 Spanish mathematics); Algebra I and II; Geometry; Precalculus; and Mathematical Models with Applications. A work group of teachers, central office staff, and university personnel was assembled to review these TEKS. After the work group refined and aligned the secondary mathematics TEKS, the draft revisions were placed on the TEA web site in the form of a survey to collect feedback from the public for 30

days beginning in mid-May 2004. A summary of the survey results was provided to the SBOE at its July 2004 meeting. The draft revisions were also provided to a review panel consisting of three highly regarded mathematics experts.

During the September 2004 meeting, the SBOE was presented with a description of the expert reviewers' comments on the TEKS. During the September and November 2004 meetings, the SBOE was provided with an explanation of the changes for alignment and refinement of the TEKS. Examples of the adopted amendments include revisions for precision in language, mathematical correctness, and parallel language from Grades 6 - 12.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Education Code, §7.102, which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum.

The amendments implement the Texas Education Code, §§7.102, 28.002, and 28.025.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. HIGH SCHOOL

19 TAC §§111.32 - 111.36

The State Board of Education (SBOE) adopts amendments to §§111.32 - 111.36, concerning the Texas Essential Knowledge and Skills (TEKS) for mathematics. The amendments are adopted without changes to the proposed text as published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11529) and will not be republished. The sections establish the curriculum standards for the following high school mathematics courses: Algebra I, Algebra II, Geometry, Precalculus, and Mathematical Models with Applications. The adopted amendments refine and align secondary mathematics TEKS. Amendments to middle school mathematics TEKS are also adopted in this issue.

Following a November 2003 directive from the SBOE to provide a schedule for reviewing the TEKS, Texas Education Agency (TEA) staff proposed a 2004-2005 TEKS review calendar. The TEKS review process will follow the same timeline as the textbook adoption process, as appropriate. The SBOE issued Proclamation 2004 in May 2004, calling for instructional materials in the area of secondary mathematics.

TEA staff proceeded with the review process for the secondary mathematics TEKS in the areas of: mathematics, Grades 6-8 (including Grade 6 Spanish mathematics); Algebra I and II; Geometry; Precalculus; and Mathematical Models with Applications. A work group of teachers, central office staff, and university personnel was assembled to review these TEKS. After the work group refined and aligned the secondary mathematics TEKS, the draft revisions were placed on the TEA web site in the form of a survey to collect feedback from the public for 30 days beginning in mid-May 2004. A summary of the survey results was provided to the SBOE at its July 2004 meeting. The draft revisions were also provided to a review panel consisting of three highly regarded mathematics experts.

During the September 2004 meeting, the SBOE was presented with a description of the expert reviewers' comments on the TEKS. During the September and November 2004 meetings, the SBOE was provided with an explanation of the changes for alignment and refinement of the TEKS. Examples of the adopted amendments include revisions for precision in language, mathematical correctness, and parallel language from Grades 6-12.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Education Code, §7.102, which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum.

The amendments implement the Texas Education Code, §§7.102, 28.002, and 28.025.

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 26. SMALL EMPLOYER HEALTH INSURANCE REGULATIONS

The Commissioner of Insurance adopts amendments to §§26.4 - 26.11, 26.13, 26.15, 26.16, 26.18 - 26.20, 26.22, 26.24, 26.26, 26.301 - 26.309, 26.311, 26.312, and new §26.14 and §26.27, concerning small and large employer health insurance regulations. Sections 26.4, 26.7, 26.9, 26.11, 26.13, 26.20, 26.304, 26.306, and 26.307 are adopted with changes to the proposed text as published in the November 12, 2004, issue of the *Texas Register* (29 TexReg 10422). Sections 26.5, 26.6, 26.8, 26.10, 26.14 - 26.16, 26.18, 26.19, 26.22, 26.24, 26.26, 26.27, 26.301-26.303, 26.305, 26.308, 26.309, 26.311 and 26.312 are adopted without changes.

This adoption is necessary to implement House Bills 1211, 1217, and 2969 and Senate Bill 881, enacted by the 76th Legislature (1999); House Bills 471, 949, 1440, 1676, and 2382 and Senate Bill 990, enacted by the 77th Legislature (2001); and House Bills 897 and 1446, and Senate Bills 10 and 541, enacted by the 78th Legislature (2003). The referenced bills amended provisions of Insurance Code, Chapter 26, to provide for the availability and affordability of health insurance for small and large employers; to conform Texas law with updates to the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA); and to clarify the scope and meaning of certain provisions in the rules. In conjunction with the adopted amendments and new sections, the department is repealing existing §26.14 and §26.27, which is published elsewhere in this issue of the *Texas Register*. Along with the drafting of language to effect the statutory changes previously mentioned, some non-substantive style and grammatical changes were included to enhance the clarity and readability of the rules.

The department changed §26.4(12) to clarify requirements relating to dependents 25 years of age or older. The department changed §26.4(15) to state more specifically the circumstances under which a carrier must cover a sole proprietor, partner, or independent contractor who does not otherwise qualify as an eligible employee. The department changed §26.7(c) to specify an employer's responsibility to produce documents evidencing employer/employee status. The department changed §26.9 to clarify a carrier's obligation regarding creditable coverage where a waiting period is involved. The department changed §26.13 to focus the new provision more precisely on objectionable acts as well as to broaden the scope to include renewal, and to make the timeframe for an insurer to provide premium rate quotes to employers more workable for both insurers and employers in their contract negotiations. The department changed §26.20 to outline clearly the reporting requirements for consumer choice health benefit plans issued to employer groups. The department changed §26.304(c) to specify an employer's responsibility to produce documents evidencing employer/employee status. The department changed §26.306 to clarify a carrier's obligation regarding creditable coverage where a waiting period is involved. The department changed §26.307 to focus the new provision more precisely on objectionable acts as well as to broaden the scope to include renewal.

Section 26.4 amends existing definitions and adds new definitions of terms relating to small and large employer health coverage. Section 26.5 expands the scope of the chapter in compliance with HIPAA, and clarifies requirements relating to minimum group size. Section 26.6 revises procedures and deadlines and adds new procedures for filing certain certifications. Section 26.7 clarifies that health carriers may require proof of status as a small employer, provides examples of reasonable and appropriate supporting documentation, and redefines open enrollment periods in compliance with recent state legislation. Section 26.8 contains minor changes in compliance with HIPAA as well as new language explaining a health carrier's option to terminate coverage due to group size violations. Section 26.9 makes clarifying changes to language and the example relating to the application of preexisting conditions. Section 26.10 replaces the term "group size" with "the number of employees and dependents of a small employer." Section 26.11 revises procedures for filing proposed changes to rating methodology, amends the procedure for developing and retaining rate manuals in accordance with recent legislation, replaces the term "group size" with "the number of employees and dependents of a small employer" in reference to limits on disparity in rate factors, and requires use of uniform terms for obtaining information relating to a small employer group. Adopted §26.13 updates references to changes in forms; revises the requirement regarding offers of standard benefit plans, including a requirement that small employers must affirm an offer of the plans; prohibits carriers from discriminating between small employer groups when obtaining information; changes the term "price quote" to "premium rate quote" and sets out procedures for providing premium rate quotes; revises the requirement for eliciting information regarding whether a plan is subject to Insurance Code Chapter 26, Subchapters A - G; and prohibits retaliation against an agent related to the agent's request that the carrier issue or renew coverage to a small employer. Section 26.14 sets out requirements for offers of plans; revises continuation and conversion requirements to conform to new legislation; and contains minor technical changes in compliance with HIPAA. Section 26.14 contains some provisions from the §26.14 adopted for repeal. Section 26.15 allows nonrenewal of plans not in compliance with minimum group size requirements, and deletes requirements for conversion provisions. Section 26.16 adds a subsection clarifying that carriers are subject to all applicable withdrawal and discontinuation requirements. Section 26.18 revises requirements relating to the election to be a risk-assuming or reinsured carrier and clarifies requirements for renewal of that election or application at the end of the election period. Section 26.19 revises and clarifies requirements related to filing certifications, and revises format requirements for accident and health policy filings. Section 26.20 clarifies a carrier's obligation to complete certain forms and revises previous reporting requirements in light of new requirements to offer consumer choice health benefit plans instead of prototype policies. Section 26.22 clarifies that March 1 of each year is the deadline for Private Purchasing Cooperatives to file their statements of amounts collected and expenses incurred, and changes the reference to a form that must be filed. Section 26.24 reflects organizational changes within the department. Section 26.26 updates statutory references due to recodification. Section 26.27 provides notice as to how required forms may be obtained.

Section 26.301 expands the scope of this chapter in compliance with HIPAA as well as clarifying requirements relating to minimum group size and a carrier's option to terminate coverage due to violation of minimum group size requirements. Section 26.302 revises procedures and deadlines and adds new procedures for filing certain certifications. Section 26.303 makes minor amendments to comply with HIPAA and adds language allowing termination for noncompliance with minimum group size requirements. Section 26.304 clarifies that health carriers may require proof of status as a large employer and provides examples of reasonable and appropriate supporting documentation. Section 26.305 redefines open enrollment periods in compliance with recent state legislation. Section 26.306 clarifies that the 12 month limitation on preexisting condition provisions may

not apply with regard to certain late enrollees and clarifies language and the example relating to the application of preexisting conditions. Section 26.307 revises the requirement for eliciting information regarding whether a plan is subject to Insurance Code Chapter 26, Subchapters A, C and H, and prohibits retaliation against an agent related to the agent's request that the carrier issue or renew coverage to a large employer. Section 26.308 allows nonrenewal of plans not in compliance with minimum group size requirements. Section 26.309 clarifies the notification requirements of health carriers withdrawing from the large employer market. Throughout the sections, including §§26.9, 26.11, 26.306, 26.311 and 26.312, the department made minor changes for clarification; to correct form, grammar, and citations; and to update examples and references to form numbers.

General: A commenter states that the legal framework governing the small employer market is highly complex, and contends that the more complex the requirements become, the less the true marketplace governs insurance. The commenter also states that the more complexity in regulation, the less likely it will be that new entrants will begin offering coverage. The commenter requests that the department keep the marketplace in mind to help encourage availability of coverage.

Agency Response: The department was created by the Texas Legislature, and its duties derive from statute. Section 31.002 of the Insurance Code, for example, requires the department to regulate the business of insurance in this state, and accordingly the department takes marketplace conditions into account in every discretionary decision. The statute continues, however, by specifically requiring the department to execute the laws of the state regarding insurance and insurance companies. Moreover, §31.021 requires the commissioner to administer and enforce the insurance laws of this state, as well as other laws granting jurisdiction or applicable to the department or the commissioner. The great majority of the proposed changes fall within this legislative direction--administering and enforcing the insurance laws of this state. The department, however, is always monitoring access to health benefit plan coverage and is always open to actions which will increase that access, no matter their source or nature.

§26.4(12): A commenter is concerned about the amendment to the definition of "dependent," which includes a child who is a full-time student age 25 or older as described in Insurance Code Article 21.24-2. The commenter is concerned that the definition may be interpreted to require continued coverage of all full-time students over 25, and asks for clarification that the reference to this statute applies only if full-time students over age 25 are to be covered by the health benefit plan.

Agency Response: Insurance Code Article 21.24-2 does not mandate coverage for full-time students over the age of 25. It sets out certain requirements of a health benefit plan that conditions coverage for a child 25 years of age or older on the child's being a full-time student at an educational institution. The department has substituted "as required by" for "described in" to clarify this point.

§26.4(15): Some commenters request that the department revise the definition of "Eligible Employee" to include an owner or employee who works on a full time basis.

Agency Response: The department declines to make this change. An owner of a business is an employee if he has legal status as an employee. To deem him an employee in all cases, regardless of the relevant facts, would create a class not authorized by Insurance Code Article 26.02. Note that under the definition of eligible employee, certain classes of owners (i.e. sole proprietors and partners) may still be entitled to coverage regardless of their status as an "eligible employee." See Commissioner's Bulletin B-0043-04 for more detail.

§26.4(15): Several commenters request language clarifying the requirements for coverage of a sole proprietor, partner, or independent contractor who does not usually work 30 hours per week and thus qualify as an eligible employee. Some commenters request specific language indicating that there must be two other employees covered to qualify such employees for coverage. Another commenter notes that the proposed amendment to the definition makes irrelevant the number of hours an independent contractor, sole proprietor or partner works weekly. The commenter states that this qualification creates an internal inconsistency in the definition and may reduce the meaning of the term, with regard to these three classes of individuals, to someone who works only on a sporadic basis, which could promote fraud.

Some commenters suggest that the department should not amend the definition of "Eligible Employee" and instead should add a new section to specifically address sole proprietors, independent contractors, or partners. One commenter urges that the proposed revision could be interpreted to conflict with Commissioner's Bulletin B-0043-04 and require coverage of an employer with only one eligible employee and one non-working sole proprietor.

Agency Response: The department agrees with commenters and has added language to clarify that an employer plan must cover at least two other eligible employees before it must cover a sole proprietor, partner, or independent contractor who does not otherwise qualify as an eligible employee. The department believes the amendment addresses this issue sufficiently and declines to add a separate section to address the rights of these individuals.

The number of hours an independent contractor, sole proprietor or partner works weekly is irrelevant to the individual's status as an eligible employee, but the amendment to the definition does not create that result. While an employee must generally be full-time and usually work 30 hours per week to be eligible, the legislature has deemed these three classes of individuals eligible solely because they are included in the health benefit plan of a small or large employer. The statute does not make them subject to the 30 hour per week requirement, nor does it suggest an alternative standard. Regardless of the consequences the commenter suggests, the department does not have discretion to alter this legislative directive.

§26.4(18): A commenter seeks clarification of the meaning of family history and queried why it is related to genetic information. Another commenter asserts that use of family history information is generally considered subjective in nature and contends that the use of family history appears to contradict Insurance Code Article 21.73, which specifically requires genetic information to be based upon scientific determination or testing; both of which are purely objective findings. Another commenter suggests that including family history in this definition is beyond the statute.

A commenter points out that the terms "risk characteristic" and "risk load," in Article 26.02(29) and (30) do not include genetic information as does the proposed amendment to 28 TAC §26.4. The proposed exclusion of "genetic information" in these terms is incompatible with the definition of "risk characteristic," which relies on the definition of "health status related factor," in Article

26.02(13)(F), which itself specifically includes genetic information. Also, as written, Article 26.32(d) permits a carrier to adjust the second step premium rate by the "risk load" of the particular group. Article 26.02(30), as noted above, defines "risk load" to include genetic information due to the ultimate use of the definition's reliance upon the meaning of "health status related factor."

Another commenter urges adoption of the proposed amended definition because the commenter believes that the statute clearly contemplates that genetic information is not limited to results of a genetic test but also includes the "presence or absence in an individual of a genetic characteristic."

Agency Response: Insurance Code Article 26.04 directs the commissioner to adopt rules as necessary to meet the minimum requirements of federal law and regulations. HIPAA interim regulations include "family histories" within the definition of genetic information at 45 CFR §144.103; 29 CFR §2590.701-2; and 26 CFR §54.9801-2T. Accordingly, the department declines to make the change the commenters suggest.

Staff proposed the changes to the definitions of "risk characteristic" and "risk load" consistent with the enactment of Article 21.73, which prohibits a group health benefit plan issuer from using genetic information to reject, deny, limit, cancel, refuse to renew, increase the premiums for, or otherwise adversely affect eligibility for or coverage under a group health benefit plan. Accordingly, the department declines to change the language that was proposed for these definitions.

§26.4(42) and §26.13(e): Regarding the proposed definition of "Premium Rate Quote" and the requirements of §26.13(e) regarding issuance of a premium rate quote, a commenter observes that the industry practice is to give an initial premium estimate pending completion of the application and enrollment forms. Another commenter points out that many employers request such an estimate before deciding to complete the required application and employee health questionnaires necessary for a formal quote, but suggests that the proposed new definition implies that the quote given will be the final premium rate for the policy. The commenter requests that Texas Department of Insurance clarify whether the new definition and revised provisions would prohibit the practice of providing preliminary quotes and whether such a preliminary quote would be subject to the deadlines for response in the proposed regulation.

Another commenter urges that the deadline of five business days for requesting the documents and information necessary to issue a binding quote is not adequate. The commenter asserts that although a carrier can underwrite the majority of cases based on employee enrollment forms and the employer application, some cases require the review of medical records and other information to underwrite and price the case accurately. The commenter states that the carrier may not be able to identify the addition information needed until it has reviewed the documents it received from the employer, at which point the carrier would request the additional information or documents. Once the carrier obtains the additional information, it may adjust the premium rate adequately to reflect the appropriate risk.

The commenter is concerned that the new language suggests that the carrier would have only one opportunity to request the required information and would, after receipt of the information, have to issue a final premium rate for the policy. This quote necessarily would be based on the partial information the carrier had been able to obtain and would most likely result in a higher rate than might otherwise apply due to the carrier acting to protect against the potential of unknown health conditions. The commenter suggests that rates could be lower if carriers have sufficient time to ascertain the actual health and composition of the group.

The commenter recommends changing the time period in which a carrier must request additional information and documents to at least 15 business days from the date of the carrier's receipt of a request for a formal rate quote and changing the deadline for the final quote to be given to 10 business days from the date the complete information is received.

Agency Response: The proposed definition of "premium rate quote" uses the language "offers and will accept to make coverage effective." The department understands the cited industry practice of providing preliminary estimates for the convenience of prospective customers and does not intend to disrupt the good faith use of that practice. At the same time, gathering the information needed for a formal rate quote should be expeditious and predictable, and the carrier must communicate to a prospective customer when it is presenting a quote that the prospective customer can rely on as the price that will effect coverage. To address the concern that carriers might quote unnecessarily high prices because of the timeframes in the proposal, the department has adopted changes to §26.13(e) to clarify that a small employer carrier shall provide a premium rate quote within 15 business days of receiving a small employer's completed application for coverage and individual enrollment forms; that the carrier may request certain additional information necessary to provide the premium rate quote; that such request tolls the running of the 15-day period until receipt of the requested additional information; and that a small employer carrier may provide an estimated cost of coverage so long as the carrier makes clear that the estimate is not a premium rate quote.

§26.4: A commenter suggests that the department should adopt definitions for "private purchasing cooperative" and "small employer health coalition." The commenter also notes that the term "Health Group Cooperative" is not defined and suggested adding a definition stating it is a group formed under 28 TAC §26.401 and indicating the necessary elements for the definition.

Agency Response: Although the commenter notes that the rule does not specifically define these terms, Article 26.02(32-a) defines "small employer health coalition." The statutes which create and govern private purchasing cooperatives and health group cooperatives, primarily Articles 26.14 and 26.14A, also provide meaning for these terms. The department has not seen evidence of confusion as to the meaning of these terms to the extent that adding definitions for them in the rule would be useful. The department therefore declines to define them but will continue to monitor the cooperative market and address these issues in the future as needed.

§26.6(c)(1) and (2); §26.302: Commenters note the proposal requires a map of geographic service areas and requested that the adopted regulations not require an actual map of the state of Texas, when the service area for a carrier is the entire state. Another commenter requests that the department clarify the requirement that a carrier list zip codes would not apply when the service area is the entire state.

Agency Response: While the proposal alters the language of the section, the department notes that the existing rule already contains the requirement to provide a map in certain circumstances, as well as an exemption from providing additional documentation

if the service area comprises the entire state. "Other documentation" includes both the required map and the required list of ZIP codes, thus the rule--existing or as proposed--does not require either when the geographic service area is the entire state. The department thus declines to revise the rule in response to this comment.

§26.7(c) and §26.304(c): One commenter suggests that the examples of information requests that were included in the proposal should include all of the information a carrier may request under the health group cooperatives/coalitions requirements to avoid the appearance of a conflict. Another commenter believes the language of the proposal could be interpreted to mean that production of any single document on the example list will be sufficient to prove status as a small employer. The commenter emphasizes that an invoice alone is not sufficient to verify legitimate employer status, and believes that an incorrect interpretation of the rule could promote fraud by non-employers attempting to obtain employer coverage. The commenter recommends revising the section to state, "A small employer carrier may not condition the issuance of coverage on an employer's production of a particular document, where the employer can otherwise provide information requested by the small employer carrier in accordance with this section."

Agency Response: The adopted rule includes language changes that address the commenters' concerns about documents evidencing employer/employee status. With regard to the information a carrier may request to determine whether a cooperative exists, Article 26.14 sets out a specific list of documents that an entity must obtain to qualify as a cooperative. Accordingly, the department does not believe it is necessary to relist those documents in this provision.

§26.9(a)(14): A commenter believes that existing rules are not clear about how to administer partial credits for creditable coverage when the member is subject to a waiting period and requests that the department add another example that addresses waiting periods.

Agency Response: The example the commenter submitted would begin the preexisting condition exclusion period at the end of the waiting period. Federal law states that where a plan imposes a waiting period, the waiting period runs concurrently with any preexisting condition exclusion period. HIPAA interim rules, p. 16897. The department thus declines to include the submitted example.

To illustrate this principle, assume an individual with six months of creditable coverage enrolls in his new employer's plan on January 1, 2005; that the plan imposes a 90-day waiting period; and that the carrier imposes a 12-month preexisting condition exclusion.

The waiting period and preexisting condition exclusion period both begin to run concurrently on January 1, 2005, and the waiting period expires on April 2, 2005. The effective date of coverage is April 3, 2005. The preexisting condition exclusion period must by law expire no later than December 31, 2005, so reducing it by six months for the employee's credit will cause it to end on June 30, 2005.

In reviewing the rule in response to the comment, the department noted some inconsistency in the rule's treatment of these situations, as well as with the use of the term "effective date." Section 26.4(14) defines "effective date" to be the first day of coverage under a health benefit plan, or, if there is a waiting period, the first day of the waiting period. In response to the comment and to comply with federal law, the department has revised the rule in several places. First, the department revised §26.9 to add a new paragraph (3), which is substantively the same provision that governs large employer plans at §26.306(b). These provisions prohibit a preexisting condition provision in an employer health benefit plan generally from applying to expenses incurred on or after the expiration of the 12 months following the initial effective date of coverage. As the rule defines effective date, that 12 month period begins to run on the first day of any waiting period. The department has also deleted the term "initial" from §26.306(b) as it is redundant. There is only one effective date of coverage. If there is no waiting period, it is the actual effective date of coverage. If there is a waiting period, it is the first day of the waiting period.

While the department is not changing these provisions, it is important to clarify the effect of §26.9(a)(13) and §26.306(g). These two provisions also use the term effective date, and they require a carrier to credit the time an individual was covered under creditable coverage if the previous coverage was in effect at any time during the 12 months preceding that effective date. The department has heard reports that some carriers are dating the 12 month look-back period from the first day after the waiting period expires. Where a plan includes a waiting period, this 12-month look-back period must date from the first day of the waiting period.

The other change the department has made to the rule involves the six-month period prior to the effective date of coverage which a carrier may examine to determine whether an individual has a preexisting condition. Consistent with the other applications discussed previously, this period begins on the effective date of coverage, and the department has revised §26.9(a)(9) and §26.306(c) to eliminate duplicative language and express this standard consistent with the rule's definition of "effective date." The previous rule defined a six-month period before the earlier of the (A) effective date of coverage; or (B) the first day of the waiting period. Since the rule defines effective date to be the earlier of these two dates, this repetition is unnecessary and the department has revised the rule in these two places to reflect only the term "effective date."

§26.11(d): A commenter notes that Chapter 26 throughout references group size as being the total number of employees and dependents, queries whether a carrier must count dependents when determining the employer's group size, and if so, seeks explanation as to how this requirement correlates with the statutory definitions of a small and large employer.

Agency Response: The changes to the rule reflect changes in terminology made by statute regarding particular calculations such as case characteristics. The usage of this new phrase in both rule and statute does not affect the determination of whether an employer is a small or large employer.

§26.13(d): Commenters suggest that the proposed requirement that carriers obtain a signature regarding the offer of a consumer choice plan is duplicative, as the consumer choice regulation already requires a carrier to obtain affirmation that it offered the employer a plan with mandates, and creates a new and unnecessary administrative burden on the carrier.

Agency Response: The department disagrees because this provision merely references the existing requirement in the consumer choice plan regulation. It does not add a new requirement, nor does it require a second signature. The department thus declines to make the change the commenter requests.

§26.13(k): A commenter observes that the proposal adds a requirement that the carrier determine if the employer's plan is an ERISA plan, which appears to require resubmission of all small employer application forms for this change. The commenter requests removal of this language because it creates an administrative burden on the carriers.

Agency Response: The department believes that the addition of Insurance Code Article 26.06(a)(3) created the requirement for a carrier to determine if an employer's plan is an ERISA plan and thus declines to make the change the commenter requests.

§26.13(n) and §26.307(g): A commenter expresses concern that proposed subsection (n) is overly broad and could be interpreted to prohibit termination of an agent for a valid reason. The commenter requests that the department insert "except for a violation of applicable law" after "any reason."

Another commenter notes that the current statute and regulation clearly specify the wrongful acts of terminating an agent or nonrenewing the agent's contract--which are very specific actions that leave no room for interpretation. The commenter requests that the department provide examples of what it believes constitute "any other negative action," phrased in a manner to include such examples without limiting the actions to the stated examples.

Another commenter believes this proposed language is overly broad and could be interpreted to prohibit termination of an agent for valid reasons including but not limited to violation of applicable insurance laws or misconduct by an agent. The commenter recommends that the department delete the phrase "any reason related to" from the regulation. The commenter believes the regulation so revised would still prohibit a carrier from terminating an agent for requesting the carrier to issue a health benefit plan, while at the same time providing carriers the ability to terminate an agent for illegal and/or inappropriate conduct.

Agency Response: The department agrees with commenters regarding the scope of the proposal and has deleted the phrase "any reason related to" from the adopted rule. To give the rule greater effect, the department has also added the term "or renew" following "issue" in both provisions. With regard to what constitutes "any other negative action," the listed examples fairly represent common types of negative action, but others may arise on a case-by-case basis. The department intends the rule to give effect to the spirit of Article 26.72, i.e., a negative action would include an action having an adverse effect on an agent that would tend to reduce access to small employer health benefit plans. While the department declines to provide additional examples of what constitutes "any other negative action," the department will continue to monitor agent and carrier relationships and address this issue in the future as needed.

§26.15 and §26.308: A commenter requests that the department revise these sections, which address renewability of coverage for small and large employer plans, to allow insurers to make changes to plan benefits as long as changes are made on a uniform and consistent basis. The commenter states that the department's interpretation of the HIPAA guaranteed renewability provision is burdensome on the industry because it requires indefinite maintenance of multiple plan designs. The commenter contends that carriers typically develop new products every several years in order to keep benefit plans affordable and to maintain competitiveness, and that allowing carriers to keep policy designs consistent among existing and new policyholders allows for easier administration and claims adjudication.

Agency Response: Insurance Code Article 26.23 precludes the change requested by the commenter. Moreover, authorizing carriers to unilaterally alter the terms of contracts would significantly dilute the meaning and importance of guaranteed renewability. The department also notes that Article 26.23 does not require a carrier to indefinitely maintain multiple plan designs, nor prevent it from keeping policy designs consistent among existing and new policyholders. The statute merely requires it to obtain policyholder approval to make such changes. Should a carrier be unable to obtain policyholder approval, Article 26.24 also provides the carrier the ability to keep policy designs consistent.

§26.20(b)(3): A commenter objects to the proposal that would require the filing of copies of the three most popular consumer choice plans with the annual small employer filing, based on the sheer number of pages for such copies. The commenter also objects to the requirement to identify the three most popular consumer choice plans and the number of employers and employees covered by each. The commenter believes that revealing that information would put a carrier, particularly one that has devoted considerable time, resources and expense to developing consumer choice plans, at a competitive disadvantage, asserting that if a company's information is readily available through Texas Department of Insurance, a competitor could save the expense and time of development and merely duplicate the first company's most popular plan. The commenter suggests that, in the alternative, the rule require the filing of one of a company's three most popular plans, with a copy of the form, but without the number of employers or employees covered under that plan.

Agency Response: The department has changed the rule to require a copy of the exact certificate of coverage for each of the three most frequently issued consumer choice plans. Carriers that wish the department to treat the filing as confidential should indicate that preference with the filing.

§26.303: A commenter suggests that since this provision applies to large employers, the subsection (k) reference to the small employer group rule §26.5(a) could lead to confusion. The commenter requests that the department clarify in the adoption order that the minimum size requirement in this subsection applies to large employer groups.

Agency Response: While the minimum size requirement in §26.5(a) applies specifically to small employer groups, §26.202 incorporates that requirement by reference and applies it to large employer groups as well. While the odds of a large employer falling below the minimum group size requirement are considerably less than the odds of a two-eligible employee group doing so, the possibility exists nonetheless. Since federal law requires renewal of a large employer's plan even if the group's size drops below 51 eligible employees, it is important to clarify that there is a minimum threshold which large employers and small employers alike must meet to continue to qualify for coverage.

For--Office of Public Insurance Counsel.

For, with changes--American Medical Security; Long, Burner, Parks and DeLargy; Scott & White Health Plan; Texas Association of Health Plans; Texas Association of Life and Health Insurers; Unicare, Inc., Humana, Inc., and several individuals, some of whom are insurance agents.

SUBCHAPTER A. SMALL EMPLOYER HEALTH INSURANCE PORTABILITY AND AVAILABILITY ACT REGULATIONS

28 TAC §§26.4 - 26.11, 26.13 - 26.16, 26.18 - 26.20, 26.22, 26.24, 26.26, 26.27

The amendments and new sections are adopted under Insurance Code Article 26.04, HIPAA, and Insurance Code §36.001. Chapter 26 of the Insurance Code implements provisions regarding small and large employers which were necessary to comply with the federal requirements contained in HIPAA. Article 26.04 requires the commissioner to adopt rules as necessary to implement the Insurance Code, Chapter 26, and to meet the minimum requirements of federal law and regulations which, for small and large employer health carriers, are contained in HIPAA. Federal agencies have adopted regulations implementing HIPAA as follows: Department of the Treasury, 26 CFR Part 54; Department of Labor, 29 CFR Part 2590; and Department of Health and Human Services, 45 CFR Part 144 and Part 146. As identified in the Introduction, portions of the Federal Regulations are included in these rules as necessary to meet the minimum requirements of federal law. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§26.4. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Actuary--A qualified actuary who is a member in good standing of the American Academy of Actuaries.

(2) Affiliation period--A period of time that under the terms of the coverage offered by an HMO, must expire before the coverage becomes effective. During an affiliation period an HMO is not required to provide health care services or benefits to the participant or beneficiary and a premium may not be charged to the participant or beneficiary.

(3) Agent--A person who may act as an agent for the sale of a health benefit plan under a license issued under the Insurance Code, Chapter 21.

(4) Base premium rate--For each class of business and for a specific rating period, the lowest premium rate that is charged or that could be charged under a rating system for that class of business by the small employer carrier to small employers with similar case characteristics for small employer health benefit plans with the same or similar coverage.

(5) Case characteristics--With respect to a small employer, the geographic area in which that employer's employees reside, the age and gender of the individual employees and their dependents, the appropriate industry classification as determined by the small employer carrier, the number of employees and dependents, and other objective criteria as established by the small employer carrier that are considered by the small employer carrier in setting premium rates for that small employer. The term does not include health status related factors, duration of coverage since the date of issuance of a health benefit plan, or whether a covered person is or may become pregnant.

(6) Child--An unmarried natural child of the employee, including a newborn child; adopted child, including a child as to whom an insured is a party in a suit seeking the adoption of the child; natural child or adopted child of the employee's spouse.

(7) Class of business--All small employers or a separate grouping of small employers established under the Insurance Code, Chapter 26, Subchapters A-G.

(8) Commissioner--The commissioner of insurance.

(9) Consumer choice health benefit plan--A health benefit plan authorized by Insurance Code Article 3.80 or Article 20A.09N.

(10) Creditable coverage--

(A) An individual's coverage is creditable for purposes of this chapter if the coverage is provided under:

(i) a self-funded or self-insured employee welfare benefit plan that provides health benefits and that is established in accordance with the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

(ii) a group health benefit plan provided by a health insurance carrier or an HMO;

(iii) an individual health insurance policy or evidence of coverage;

(iv) Part A or Part B of Title XVIII of the Social Security Act (42 U.S.C. Section 1395c et seq.);

(v) Title XIX of the Social Security Act (42 U.S.C. Section 1396 et seq., Grants to States for Medical Assistance Programs), other than coverage consisting solely of benefits under Section 1928 of that Act (42 U.S.C. Section 1396s, Program for Distribution of Pediatric Vaccines);

(vi) Chapter 55 of Title 10, United States Code (10 U.S.C. Section 1071 et seq.);

(vii) a medical care program of the Indian Health Service or of a tribal organization;

(viii) a state or political subdivision health benefits risk pool;

(ix) a health plan offered under Chapter 89 of Title 5, United States Code (5 U.S.C. Section 8901 et seq.);

(x) a public health plan as defined in this section;

(xi) a health benefit plan under Section 5(e) of the Peace Corps Act (22 U.S.C. Section 2504(e)); and

(xii) short-term limited duration insurance as defined in this section.

(B) Creditable coverage does not include:

(i) accident-only, disability income insurance, or a combination of accident-only and disability income insurance;

(ii) coverage issued as a supplement to liability insurance;

(iii) liability insurance, including general liability insurance and automobile liability insurance;

(iv) workers' compensation or similar insurance;

(v) automobile medical payment insurance;

(vi) credit only insurance;

(vii) coverage for onsite medical clinics;

(viii) other coverage that is similar to the coverage described in this subsection under which benefits for medical care are secondary or incidental to other insurance benefits and specified in federal regulations;

(ix) if offered separately, coverage that provides limited scope dental or vision benefits;

(x) if offered separately, long-term care coverage or benefits, nursing home care coverage or benefits, home health care coverage or benefits, community based care coverage or benefits, or any combination of those coverages or benefits;

(xi) if offered separately, coverage for limited benefits specified by federal regulation;

(xii) if offered as independent, noncoordinated benefits, coverage for specified disease or illness;

(xiii) if offered as independent, noncoordinated benefits, hospital indemnity or other fixed indemnity insurance; or

(xiv) Medicare supplemental health insurance as defined under Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss), coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code (10 U.S.C. Section 1071 et seq.), and similar supplemental coverage provided under a group plan, but only if such insurance or coverages are provided under a separate policy, certificate, or contract of insurance.

(11) Department--The Texas Department of Insurance.

(12) Dependent--A spouse; newborn child; child under the age of 25 years; child of any age who is medically certified as disabled and dependent on the parent; any person who must be covered under Insurance Code Article 3.51-6, §3D or §3E, or the Insurance Code Article 3.70-2(L); and any other child included as an eligible dependent under an employer's benefit plan, including a child who is a full-time student as required by Insurance Code Article 21.24-2 and §11.506(19) of this title (relating to Mandatory Contractual Provisions: Group, Individual and Conversion Agreement and Group Certificate).

(13) DNA--Deoxyribonucleic acid.

(14) Effective date--The first day of coverage under a health benefit plan, or, if there is a waiting period, the first day of the waiting period.

(15) Eligible employee--An employee who works on a full-time basis and who usually works at least 30 hours a week. The term also includes a sole proprietor, a partner, and an independent contractor, if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small or large employer, regardless of the number of hours the sole proprietor, partner, or independent contractor works weekly, but only if the plan includes at least two other eligible employees who work on a full-time basis and who usually work at least 30 hours a week. The term does not include:

(A) an employee who works on a part-time, temporary, seasonal or substitute basis; or

(B) an employee who is covered under:

(i) another health benefit plan;

(ii) a self-funded or self-insured employee welfare benefit plan that provides health benefits and that is established in accordance with the Employee Retirement Income Security Act of 1974 (29 United States Code, §§1001, et seq.);

(iii) the Medicaid program if the employee elects not to be covered;

(iv) another federal program, including the TRICARE program or Medicare program, if the employee elects not to be covered; or

(v) a benefit plan established in another country if the employee elects not to be covered.

(16) Employee--Any individual employed by an employer.

(17) Franchise insurance policy--An individual health benefit plan under which a number of individual policies are offered to a selected group of a small or large employer. The rates for such a policy may differ from the rate applicable to individually solicited policies of the same type and may differ from the rate applicable to individuals of essentially the same class.

(18) Genetic information--Information derived from the results of a genetic test or from family history.

(19) Genetic test--A laboratory test of an individual's DNA, RNA, proteins, or chromosomes to identify by analysis of the DNA, RNA, proteins, or chromosomes the genetic mutations or alterations in the DNA, RNA, proteins, or chromosomes that are associated with a predisposition for a clinically recognized disease or disorder. The term does not include:

(A) a routine physical examination or a routine test performed as a part of a physical examination;

(B) a chemical, blood or urine analysis;

(C) a test to determine drug use; or

(D) a test for the presence of the human immunodeficiency virus.

(20) HMO--Any person governed by the Texas Health Maintenance Organization Act, Insurance Code, Chapters 20A and 843, including:

(A) a person defined as a health maintenance organization under the Texas Health Maintenance Organization Act;

(B) an approved nonprofit health corporation that is certified under §162.001 Texas Occupations Code, and that holds a certificate of authority issued by the commissioner under Insurance Code Article 21.52F;

(C) a statewide rural health care system under Insurance Code, Chapter 845 that holds a certificate of authority issued by the commissioner under Insurance Code, Chapter 843; or

(D) a nonprofit corporation created and operated by a community center under Chapter 534, Subchapter C, Health and Safety Code.

(21) Health benefit plan--A group, blanket, or franchise insurance policy, a certificate issued under a group policy, a group hospital service contract, or a group subscriber contract or evidence of coverage issued by a health maintenance organization that provides benefits for health care services. The term does not include the following plans of coverage:

(A) accident-only or disability income insurance or a combination of accident-only and disability income insurance;

(B) credit-only insurance;

(C) disability insurance coverage;

(D) coverage for a specified disease or illness;

(E) Medicare services under a federal contract;

(F) Medicare supplement and Medicare Select policies regulated in accordance with federal law;

(G) long-term care coverage or benefits, nursing home care coverage or benefits, home health care coverage or benefits, community-based care coverage or benefits, or any combination of those coverages or benefits;

(H) coverage that provides limited-scope dental or vision benefits;

(I) coverage provided by a single-service health maintenance organization;

(J) coverage issued as a supplement to liability insurance;

(K) insurance coverage arising out of a workers' compensation or similar insurance;

(L) automobile medical payment insurance coverage;

(M) jointly managed trusts authorized under 29 United States Code §§141 et seq. that contain a plan of benefits for employees that is negotiated in a collective bargaining agreement governing wages, hours, and working conditions of the employees that is authorized under 29 United States Code §157;

(N) hospital indemnity or other fixed indemnity insurance;

(O) reinsurance contracts issued on a stop-loss, quota-share, or similar basis;

(P) short-term limited duration insurance as defined in this section;

(Q) liability insurance, including general liability insurance and automobile liability insurance;

(R) coverage for onsite medical clinics; or

(S) coverage that provides other limited benefits specified by federal regulations; or

(T) other coverage that is:

(i) similar to the coverage described in subparagraphs (A) - (S) of this paragraph under which benefits for medical care are secondary or incidental to other insurance benefits; and

(ii) specified in federal regulations.

(22) Health carrier--Any entity authorized under the Insurance Code or another insurance law of this state that provides health insurance or health benefits in this state including an insurance company, a group hospital service corporation under Insurance Code, Chapter 842, an HMO, and a stipulated premium company under Insurance Code, Chapter 844.

(23) Health insurance coverage--Benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or HMO contract.

(24) Health status related factor--Health status; medical condition, including both physical and mental illnesses; claims experience; receipt of health care; medical history; genetic information; evidence of insurability, including conditions arising out of acts of domestic violence; and disability.

(25) Index rate--For each class of business as to a rating period for small employers with similar case characteristics, the arithmetic average of the applicable base premium rate and corresponding highest premium rate.

(26) Large employer--An employer who employed an average of at least 51 eligible employees on business days during the preceding calendar year and who employs at least two employees on the first day of the policy year. For purposes of this definition, a partnership is the employer of a partner.

(27) Large employer carrier--A health carrier, to the extent that carrier is offering, delivering, issuing for delivery, or renewing health benefit plans subject to Insurance Code, Chapter 26, Subchapters A and H.

(28) Large employer health benefit plan--A health benefit plan offered to a large employer.

(29) Late enrollee--Any employee or dependent eligible for enrollment who requests enrollment in a small or large employer's health benefit plan after the expiration of the initial enrollment period established under the terms of the first plan for which that employee or dependent was eligible through the small or large employer or after the expiration of an open enrollment period under Insurance Code Article 26.21(h) or 26.83(f), who does not fall within the exceptions listed below, and who is accepted for enrollment and not excluded until the next open enrollment period. An employee or dependent eligible for and requesting enrollment cannot be excluded until the next open enrollment period and, when enrolled, is not a late enrollee, in the following special circumstances:

(A) the individual:

(i) was covered under another health benefit plan or self-funded employer health benefit plan at the time the individual was eligible to enroll;

(ii) declines in writing, at the time of initial eligibility, stating that coverage under another health benefit plan or self-funded employer health benefit plan was the reason for declining enrollment;

(iii) has lost coverage under another health benefit plan or self-funded employer health benefit plan as a result of the termination of employment, the reduction in the number of hours of employment, the termination of the other plan's coverage, the termination of contributions toward the premium made by the employer; or the death of a spouse, or divorce; and

(iv) requests enrollment not later than the 31st day after the date on which coverage under the other health benefit plan or self-funded employer health benefit plan terminates;

(B) the individual is employed by an employer who offers multiple health benefit plans and the individual elects a different health benefit plan during an open enrollment period;

(C) a court has ordered coverage to be provided for a spouse under a covered employee's plan and the request for enrollment is made not later than the 31st day after the date on which the court order is issued;

(D) a court has ordered coverage to be provided for a child under a covered employee's plan and the request for enrollment is made not later than the 31st day after the date on which the employer receives the court order or notification of the court order;

(E) the individual is a child of a covered employee and has lost coverage under Chapter 62, Health and Safety Code, Child Health Plan for Certain Low-Income Children or Title XIX of the Social Security Act (42 U.S.C. §§1396, et seq., Grants to States for Medical Assistance Programs), other than coverage consisting solely of benefits under Section 1928 of that Act (42 U.S.C. §1396s, Program for Distribution of Pediatric Vaccines);

(F) the individual has a change in family composition due to marriage, birth of a child, adoption of a child, or because an insured becomes a party in a suit for the adoption of a child;

(G) an individual becomes a dependent due to marriage, birth of a newborn child, adoption of a child, or because an insured becomes a party in a suit for the adoption of a child; and

(H) the individual described in subparagraphs (E), (F) and (G) of this paragraph requests enrollment no later than the 31st day after the date of the marriage, birth, adoption of the child, loss of the child's coverage, or within 31 days of the date an insured becomes a party in a suit for the adoption of a child.

(30) Limited scope dental or vision benefits--Dental or vision benefits that are sold under a separate policy or rider and that are limited in scope to a narrow range or type of benefits that are generally excluded from hospital, medical, or surgical benefits contracts.

(31) Medical care--Amounts paid for:

(A) the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body;

(B) transportation primarily for and essential to the medical care described in subparagraph (A) of this paragraph; or

(C) insurance covering medical care described in either subparagraph (A) or (B) of this paragraph.

(32) Medical condition--Any physical or mental condition including, but not limited to, any condition resulting from illness, injury (whether or not the injury is accidental), pregnancy, or congenital malformation. Genetic information in the absence of a diagnosis of the condition related to such information shall not constitute a medical condition.

(33) New business premium rate--For each class of business as to a rating period, the lowest premium rate that is charged or offered or that could be charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued small employer health benefit plans that provide the same or similar coverage.

(34) New entrant--An eligible employee, or the dependent of an eligible employee, who becomes part of or eligible for a small or large employer group after the initial period for enrollment in a health benefit plan. After the initial enrollment period, this includes any employee or dependent who becomes eligible for coverage and who is not a late enrollee.

(35) Participation criteria--Any criteria or rules established by a large employer to determine the employees who are eligible for enrollment, including continued enrollment, under the terms of a health benefit plan. Such criteria or rules may not be based on health status related factors.

(36) Person--An individual, corporation, partnership, or other legal entity.

(37) Point-of-service coverage (POS coverage)--Coverage provided under a POS plan as described in §21.2901 of this title (relating to Definitions) and as permitted by Article 26.48, Insurance Code.

(38) Plan year--For purposes of the Insurance Code, Chapter 26, and this chapter, a 365-day period that begins on the plan or policy's effective date or a period of one full calendar year, under a health benefit plan providing coverage to small or large employers and their employees, as defined in the plan or policy. Small or large employer carriers must use the same definition of plan year in all small or large employer health benefit plans.

(39) Postmark--A date stamp by the US Postal Service or other delivery entity, including any electronic delivery available.

(40) Preexisting condition provision--A provision that denies, excludes, or limits coverage as to a disease or condition for a specified period after the effective date of coverage.

(41) Premium--All amounts payable by a small or large employer and eligible employees as a condition of receiving coverage from a small or large employer carrier, including any fees or other contributions associated with a health benefit plan.

(42) Premium rate quote--A statement of the premium a small or large employer carrier offers and will accept to make coverage effective for a small or large employer.

(43) Public health plan--Any plan established or maintained by a State, county, or other political subdivision of a State that provides health insurance coverage to individuals who are enrolled in the plan.

(44) Rating period--A calendar period for which premium rates established by a small employer carrier are assumed to be in effect.

(45) Reinsured carrier--A small employer carrier participating in the Texas Health Reinsurance System.

(46) Renewal date--For each small or large employer's health benefit plan, the earlier of the date (if any) specified in such plan (contract) for renewal; the policy anniversary date; or the date on which the small or large employer's plan is changed. To determine the renewal date for employer association or multiple employer trust group health benefit plans, small or large employer carriers may use the date specified for renewal, or the policy anniversary date, of either the master contract or the contract or certificate of coverage of each small or large employer in the association or trust. Small or large employer carriers must use the same method of determining renewal dates for all small or large employer health benefit plans. A change in the premium rate is not considered a renewal if the change is due solely:

(A) to the addition or deletion of an employee or dependent if the deletion is due to a request by the employee, death or retirement of the employee or dependent, termination of employment of the employee, or because a dependent is no longer eligible; or

(B) to fraud or intentional misrepresentation of a material fact by a small employer or an eligible employee or dependent.

(47) Risk-assuming carrier--A small employer carrier that elects not to participate in the Texas Health Reinsurance System, as approved by the department.

(48) Risk characteristic--The health status related factors, duration of coverage, or any similar characteristic, except genetic information, related to the health status or experience of a small employer group or of any member of a small employer group.

(49) Risk load--The percentage above the applicable base premium rate that is charged by a small employer carrier to a small employer to reflect the risk characteristics of the small employer group. A small employer carrier may not use genetic information to alter or otherwise affect risk load.

(50) Risk pool--The Texas Health Insurance Risk Pool established under Insurance Code Article 3.77, or other similar arrangements in other states.

(51) RNA--Ribonucleic acid.

(52) Short-term limited duration insurance--Health insurance coverage provided under a contract with an issuer that has an expiration date specified in the contract (taking into account any extensions

that may be elected by the policyholder without the issuer's consent) that is within 12 months of the date the contract becomes effective.

(53) Significant break in coverage--A period of 63 consecutive days during all of which the individual does not have any creditable coverage. Neither a waiting period nor an affiliation period is counted in determining a significant break in coverage.

(54) Small employer--An employer that employed an average of at least two employees but not more than 50 eligible employees on business days during the preceding calendar year and who employs at least two employees on the first day of the policy year. For purposes of this definition, a partnership is the employer of a partner. A small employer includes an independent school district that elects to participate in the small employer market as provided under Insurance Code Article 26.036.

(55) Small employer carrier--A health carrier, to the extent that health carrier is offering, delivering, issuing for delivery, or renewing, under Insurance Code Article 26.06(a), health benefit plans subject to Subchapters A - G of the Insurance Code, Chapter 26.

(56) Small employer health benefit plan--A health benefit plan offered to a small employer under the Insurance Code, Chapter 26, Subchapter E.

(57) State-mandated health benefits--As defined in §21.3502 of this title (relating to Definitions).

(58) Waiting period--A period of time established by an employer that must pass before an individual who is a potential enrollee in a health benefit plan is eligible to be covered for benefits. If an employee or dependent enrolls as a late enrollee, under special circumstances that except the employee or dependent from the definition of late enrollee, or during an open enrollment period, any period of eligibility before the effective date of such enrollment is not a waiting period.

§26.7. Requirement to Insure Entire Groups.

(a) A small employer carrier that offers coverage to a small employer and its employees shall offer to provide coverage to each eligible employee and to each dependent of an eligible employee. Except as provided in subsection (b) of this section, the small employer carrier shall provide the same health benefit plan to each such employee and dependent.

(b) If elected by the small employer, a small employer carrier may offer the eligible employees of a small employer the option of choosing among one or more health benefit plans, provided that each eligible employee may choose any of the plans offered. Except as provided in the Insurance Code, Article 26.21 and Article 26.49 (with respect to an affiliation period or exclusions for pre-existing), the choice among benefit plans may not be limited, restricted, or conditioned based upon the risk characteristics of the eligible employees or their dependents.

(c) A small employer carrier may require each small employer that applies for coverage, as part of the application process, to provide a complete list of employees, eligible employees and dependents of eligible employees as defined in Insurance Code Article 26.02. The small employer carrier may also require the small employer to provide reasonable and appropriate supporting documentation to verify the information required under this subsection, as well as to confirm the applicant's status as a small employer. The small employer carrier shall make a determination of eligibility within five business days of receipt of any requested documentation. A small employer carrier may not condition the issuance of coverage on an employer's production of a particular document, where the employer can otherwise provide the information required by this section. Similarly, if a particular document an employer produces does not reasonably evidence the employer's compliance with this subsection, the employer must produce other documentation to satisfy the requirements. Following are examples of the types of supporting documentation which a small employer carrier may request, as reasonable and appropriate, from an employer as needed to fulfill the purposes of this subsection:

(1) a W-2 Summary Wage and Tax Form or other federal or state tax records;

(2) a loan agreement;

(3) an invoice;

(4) a business check;

(5) a sales tax license;

(6) articles of incorporation or other business entity filings with the Secretary of State;

(7) assumed name filings;

(8) professional licenses; and

(9) reports required by the Texas Workforce Commission.

(d) A small employer carrier shall not deny two individuals who are married the status of eligible employee solely on the basis that the two individuals are married. The small employer carrier shall provide a reasonable opportunity for the individuals to submit evidence as provided in subsection (c) of this section to establish each individual's status as an eligible employee.

(1) The two individuals will not be eligible for coverage as a dependent. Each must be covered as an employee.

(2) A child of either of the two individuals may only be covered under the same small employer health benefit plan as a dependent by one of the two individuals.

(e) A small employer carrier shall secure a waiver with respect to each eligible employee and each dependent of such an eligible employee who declines an offer of coverage under a health benefit plan provided to a small employer. If a small employer elects to offer coverage through more than one small employer carrier, waivers are only required to be signed if the eligible individual is declining all small employer health benefit plans offered and the small employer carriers may enter into an agreement under which one small employer carrier will retain the waiver. Waivers shall be maintained by the small employer carrier for a period of six years. The waiver shall be signed by the eligible employee (on behalf of such employee or the dependent of such employee) and shall certify that the individual who declined coverage was informed of the availability of coverage under the health benefit plan. Receipt by the small employer carrier of a facsimile transmission of the waiver is permissible, provided that the transmission includes a representation from the small employer that the employer will maintain the original waiver on file for a period of six years from the date of the facsimile transmission. The waiver form shall:

(1) require that the reason for declining coverage be stated on the form;

(2) include a written warning of the penalties imposed on late enrollees; and

(3) include a statement that the eligible employee and dependents were not induced or pressured by the small employer, agent, or health carrier into declining coverage, but elected of their own accord to decline such coverage.

(f) A small employer carrier may not provide coverage to a small employer or the employees of such employer if the health carrier, or an agent for such health carrier, has knowledge that the small employer has induced or pressured an eligible employee (or dependent of an eligible employee) to decline coverage due to the individual's risk characteristics.

(g) An agent shall notify a small employer carrier, prior to submitting an application for coverage with the health carrier on behalf of a small employer or employee of a small employer, of any circumstances that would indicate that the small employer has induced or pressured an eligible employee (or dependent of an eligible employee) to decline coverage due to the individual's risk characteristics.

(h) New entrants in a health benefit plan issued to a small employer group shall be offered an opportunity to enroll in the health benefit plan currently held by such employer group or shall be offered an opportunity to enroll in the health benefit plan if the plan is provided through an individual franchise policy or more than one plan is available. If a small employer carrier has offered more than one health benefit plan to eligible employees of a small employer group pursuant to subsection (b) of this section, the new entrant shall be offered the same choice of health benefit plans as the other employees (members) in the group. A new entrant that does not exercise the opportunity to enroll in the health benefit plan within the period provided by the small employer carrier may be treated as a late enrollee by the health carrier, provided that the period provided to enroll in the health benefit plan complies with subsection (i) of this section.

(i) Periods provided for enrollment in and application for any health benefit plan provided to a small employer group shall comply with the following:

(1) the initial enrollment period shall extend at least 31 consecutive days after the date the new entrant begins employment or, if the waiting period exceeds 31 days, at least 31 consecutive days after the date the new entrant completes the waiting period for coverage;

(2) the new entrant shall be notified of his or her opportunity to enroll at least 31 days in advance of the last date enrollment is permitted;

(3) the new entrant's application for coverage shall be considered timely if he or she submits the application within the initial enrollment period. Submits, for purposes of this paragraph, means that the item(s) must be postmarked by the end of the specified time period. At the discretion of the small employer carrier, alternative methods of submission, such as facsimile transmission (fax), may be acceptable; and

(4) the small employer carrier shall provide an open enrollment period of at least 31 consecutive days on an annual basis.

(j) Any waiting period shall be established by the small employer and shall not exceed 90 days. A small employer carrier shall not apply a waiting period, elimination period, or other similar limitation of coverage (other than an exclusion for pre-existing medical conditions or impose an affiliation period consistent with the Insurance Code, Article 26.21 and Article 26.49), with respect to a new entrant, that is longer than the waiting period established by the small employer.

(k) New entrants in a health plan issued to a small employer group shall be accepted for coverage by the small employer carrier without any restrictions or limitations on coverage related to the risk characteristics of the employees or their dependents, except that a health carrier may exclude coverage for pre-existing medical conditions or impose an affiliation period, to the extent allowed under the Insurance Code, Article 26.21 and Article 26.49.

(l) A small employer carrier may assess a risk load to the premium rate associated with a new entrant, consistent with the requirements of the Insurance Code, Chapter 26, Subchapter D, and this chapter. The risk load shall be the same risk load charged to the small employer group immediately prior to acceptance of the new entrant into the group.

(m) In the case of an eligible employee (or dependent of an eligible employee) who was excluded from coverage, not eligible for coverage, or denied coverage by a small employer carrier, in the process of providing a health benefit plan to an eligible small employer (as defined in the Insurance Code, Chapter 26, and this chapter), the small employer carrier shall provide an opportunity for the eligible employee (or dependent(s) of such eligible employee) to enroll in the health benefit plan issued to the small employer or the employees of the small employer on the earlier of the first renewal date occurring on or after July 1, 1997, or the first open enrollment period occurring on or after July 1, 1997. The opportunity to enroll shall meet the following requirements.

(1) The opportunity to enroll under this subsection shall comply with subsection (i) of this section.

(2) Eligible employees and dependents of eligible employees who are provided an opportunity to enroll pursuant to this subsection shall be treated as new entrants. Premium rates related to such individuals shall be set in accordance with subsection (l) of this section.

(3) The terms of coverage offered to an individual described in this subsection may exclude coverage for preexisting medical conditions or impose an affiliation period only if the health benefit plan currently held by the small employer contains such an exclusion or an affiliation period.

(4) A small employer carrier shall provide written notice at least 45 days prior to the opportunity to enroll provided in this subsection or if less than 45 days are available, within five working days after determination that subsections (h) - (m) of this section apply to each small employer insured under a health benefit plan offered by such health carrier. A small employer carrier may provide the notice to the employer if the carrier has entered into an agreement with the employer to provide the notice to the employees. The notice shall clearly describe the rights granted under subsections (h) - (m) of this section to employees and dependents who were previously excluded from, not eligible for, or denied coverage and the process for enrollment of such individuals in the employer's health benefit plan.

(n) A small employer carrier may require an individual who requests enrollment under subsection (m) of this section to sign a statement indicating that such individual sought coverage under the group contract or franchise policy (other than as a late enrollee) and that the coverage was not offered or provided to the individual.

§26.9. Exclusions, Limitations, Waiting Periods, Affiliation Periods and Preexisting Conditions and Restrictive Riders.

(a) All health benefit plans that provide coverage for small employers and their employees as defined in Insurance Code Article 26.02(29) and §26.4 of this chapter (relating to Definitions) shall comply with the following requirements.

(1) A small employer carrier shall not exclude any eligible employee or dependent (including a late enrollee, who would otherwise be covered under a small employer's health benefit plan), except to the extent permitted under the Insurance Code, Article 26.21(k).

(2) A small employer carrier shall not limit or exclude (by use of rider, amendment, or other provision of the plan, applicable to a specific individual) coverage by type of illness, treatment, medical

condition, or accident, except for preexisting conditions or diseases or an affiliation period, as permitted under the Insurance Code, Article 26.49.

(3) A preexisting condition provision in a small employer health benefit plan may not apply to expenses incurred on or after the expiration of the 12 months following the effective date of coverage of the enrollee or late enrollee, except as authorized by paragraph (9)(B) of this subsection.

(4) A small employer health benefit plan may not limit or exclude initial coverage of a newborn child of a covered employee. Any coverage of a newborn child of an employee under this subsection terminates on the 32nd day after the date of the birth of the child unless notification of the birth and any required additional premium are received by the small employer carrier not later than the 31st day after the date of birth. A small employer carrier shall not terminate coverage of a newborn child if such carrier's billing cycle does not coincide with this 31-day premium payment requirement, until the next billing cycle has occurred and there has been nonpayment of the additional required premium, within 30 days of the due date of such premium.

(5) A small employer health benefit plan may not limit or exclude initial coverage of an adopted child of an insured. A child is considered to be the child of an insured if the insured is a party in a suit seeking the adoption of the child. The adopted child of an insured may be enrolled, at the option of the insured, within either:

(A) 31 days after the insured is a party in a suit for adoption; or

(B) within 31 days of the date the adoption is final.

(6) Coverage of an adopted child of an insured under paragraph (4) of this subsection terminates unless notification of the adoption and any required additional premium are received by the small employer carrier not later than either:

(A) the 31st day after the insured becomes a party in a suit in which the adoption of the child by the insured is sought; or

(B) the 31st day after the date of the adoption. A small employer carrier shall not terminate coverage of an adopted child if such carrier's billing cycle does not coincide with this 31-day premium payment requirement, until the next billing cycle has occurred and there has been nonpayment of the additional required premium, within 30 days of the due date of such premium.

(7) For purposes of paragraphs (4) and (6) of this subsection, received by the small employer by a specified time period means that the item(s) must be either received or postmarked by the specified time period.

(8) If a newborn or adopted child is enrolled in a health benefit plan or other creditable coverage within the time periods specified in paragraph (4) or (5) of this subsection, respectively, and subsequently enrolls in another health benefit plan without a significant break in coverage, the other plan may not impose any preexisting condition exclusion or affiliation period with regard to the child. If a newborn or adopted child is not enrolled within the time periods specified in paragraph (4) or (5) of this subsection, respectively, then in accordance with paragraph (9) of this subsection, the newborn or adopted child may be considered a late enrollee or excluded from coverage until the next open enrollment period.

(9) A small employer carrier shall choose one of the methods set forth in subparagraph (A) or (B) of this paragraph for handling requests for enrollment as a late enrollee in any health benefit plan subject to this subchapter. The small employer carrier must use the same method in regards to all such health benefit plans.

(A) The employee or dependent may be excluded from coverage and any application for coverage rejected until the next annual open enrollment period and, upon enrollment, may be subject to a 12-month preexisting condition provision, or, in the case of an HMO, may be subject to a 60-day affiliation provision, as such provisions are described by the Insurance Code, Article 26.49.

(B) the employee or dependent's application may be accepted immediately and the employee or dependent enrolled as a late enrollee during the plan year, in which case the preexisting condition provision imposed for a late enrollee may not exceed 18 months or, in the case of an HMO, the affiliation period may not exceed 90 days, from the date of the late enrollee's application for coverage.

(C) The provisions of subparagraphs (A) and (B) of this paragraph do not apply to employees or dependents under the special circumstances listed as exceptions under the definition of late enrollee in §26.4 of this chapter.

(D) Examples for applying subparagraphs (A) and (B) of this paragraph, in the case of both insurers and HMOs: Individual A requests coverage on October 1, 1997, after the enrollment period of July 1, 1997, through July 31, 1997 has ended. The next annual open enrollment period is July 1, 1998, through July 31, 1998. The effective date of coverage for persons enrolling during an open enrollment period is the beginning of the plan year, which is September 1 of each year.

(i) If the carrier is an insurer and has elected to exclude all applicants requesting late enrollment under health benefit plans subject to this subchapter until the next open enrollment period, Individual A must reapply for coverage in July 1998 and the carrier may apply up to a 12-month preexisting condition period from the effective date of coverage, as with any other enrollee, the preexisting condition period would begin on September 1, 1998, and expires on September 1, 1999.

(ii) If the carrier is an insurer and has elected to accept applications for late enrollment under health benefit plans subject to this subchapter immediately and enroll the applicant during the plan year, then the carrier may apply up to an 18-month preexisting condition period from the date of application. If Individual A applied for coverage on October 1, 1997, the preexisting condition period would begin on that date and would expire on April 1, 1999.

(iii) If the carrier is an HMO and has elected to exclude all applicants requesting late enrollment under health benefit plans subject to this subchapter until the next open enrollment period, Individual A must reapply for coverage in July 1998 and the carrier may apply up to a 60-day affiliation period, as with any other enrollee.

(iv) If the carrier is an HMO and has elected to accept applications for late enrollment under health benefit plans subject to this subchapter immediately and enroll the applicant during the plan year, then the carrier may apply up to a 90-day affiliation period from the day Individual A applied for coverage.

(10) A preexisting condition provision in a small employer health benefit plan may not apply to coverage for a disease or condition other than a disease or condition for which medical advice, diagnosis, care, or treatment was recommended or received from an individual licensed to provide such services under state law and operating within the scope of practice authorized by state law during the six months before the effective date of coverage.

(11) A small employer carrier shall not treat genetic information as a preexisting condition described by Insurance Code, Article 26.49(b) in the absence of a diagnosis of the condition related to the information.

(12) A small employer carrier shall not treat a pregnancy as a preexisting condition described in Article 26.49(b), Insurance Code.

(13) A preexisting condition provision in a small employer health benefit plan shall not apply to an individual who was continuously covered for an aggregate period of 12 months under creditable coverage that was in effect up to a date not more than 63 days before the effective date of coverage under the small employer health benefit plan, excluding any waiting period under the previous coverage. For example, Individual A has coverage under an individual policy for six months beginning on May 1, 1997, through October 31, 1997, followed by a gap in coverage of 61 days until December 31, 1997. Individual A is covered under an individual health plan beginning on January 1, 1998, for six months through June 30, 1998, followed by a gap in coverage of 62 days until August 31, 1998. Individual A's effective date of coverage under a small employer health benefit plan is September 1, 1998. Individual A has 12 months of creditable coverage and would not be subject to a preexisting condition exclusion under the small employer health benefit plan.

(14) In determining whether a preexisting condition provision applies to an individual covered by a small employer health benefit plan, the small employer carrier shall credit the time the individual was covered under creditable coverage if the previous coverage was in effect at any time during the 12 months preceding the effective date of coverage under a small employer health benefit plan. Any waiting period that applied before that coverage became effective also shall be credited against the preexisting condition provision period. For instance, Individual B is covered under an individual health insurance policy for 18 months beginning May 1, 1995, through November 30, 1996, followed by a four month gap in coverage from December 1, 1996, to March 31, 1997. On April 1, 1997, Individual B is covered under a group health plan for three months through June 30, 1997, followed by a two month gap in coverage until August 31, 1997. Individual B's coverage became effective on September 1, 1997. Under this example, since there was a significant break in coverage, to determine the length of creditable coverage, the small employer carrier counts the creditable coverage the individual had for the 12-month period preceding the effective date of the individual's coverage under the small employer plan. Individual B has creditable coverage of six months and the issuer of the small employer health benefit plan may impose a preexisting condition limitation for six months on Individual B.

(15) A small employer may establish a waiting period that cannot exceed 90 days from the first day of employment during which a new employee is not eligible for coverage. Upon completion of the waiting period and enrollment within the time frame allowed by §26.7(i) of this chapter (relating to Requirement to Insure Entire Groups), coverage must be effective no later than the next premium due. Coverage may be effective at an earlier date as agreed upon by the small employer and the small employer carrier.

(16) A health maintenance organization may impose an affiliation period, if the period is applied uniformly without regard to any health status related factor. The affiliation period shall not exceed two months for an enrollee, other than a late enrollee, and shall not exceed 90 days for a late enrollee. An affiliation period under a plan shall run concurrently with any applicable waiting period under the plan. An HMO shall not impose any preexisting condition limitation, except for an affiliation period.

(17) The imposition by an HMO carrier of an affiliation period does not preclude application of any waiting period applicable as determined by the employer to all new entrants under a health benefit plan.

(18) An affiliation period provision in a small employer health benefit plan shall not apply to an individual who would not be subject to a preexisting condition limitation in accordance with paragraphs (12) and (13) of this subsection.

(b) To determine if preexisting conditions as defined in Insurance Code Article 26.02, exist, a small employer carrier shall ascertain the source of previous or existing coverage of each eligible employee and each dependent of an eligible employee at the time such employee or dependent initially enrolls into the health benefit plan provided by the small employer carrier. The small employer carrier shall have the responsibility to contact the source of such previous or existing coverage to resolve any questions about the benefits or limitations related to such previous or existing coverage in the absence of a creditable coverage certification form.

§26.11. Restrictions Relating to Premium Rates.

(a) A small employer carrier shall develop a separate rate manual for each class of business. Base premium rates and new business premium rates charged to small employers by the small employer carrier shall be computed solely from the applicable rate manual developed pursuant to this subsection. To the extent that a portion of the premium rates charged by a small employer carrier is based on objective criteria established by the small employer carrier consistent with the criteria set out in the Insurance Code, Article 26.02(5) and Article 26.36, the manual shall specify the criteria and factors considered by the health carrier in exercising such discretion.

(b) A small employer carrier shall file with the department, at least 60 days prior to the proposed date of the change, any proposed change to the rating method used in the rate manual for a class of business. The small employer carrier shall ensure that the rating method used is actuarially sound and appropriate to assure compliance with Insurance Code, Chapter 26, and this chapter, and that differences in rates charged for each small employer health benefit plan are reasonable and reflect objective differences in plan design. The commissioner may disapprove a change to the rating method that does not meet the requirements of this chapter. At the expiration of 60 days from the filing of the form with the department the proposed change shall be deemed compliant unless prior thereto the commissioner has disapproved it by written order.

(1) The filing shall contain at least the following information:

(A) the reasons the change in rating method is being requested;

(B) a complete description of each of the proposed modifications to the rating method;

(C) a description of how the change in rating method would affect the premium rates currently charged to small employers in the class of business, including an estimate from a qualified actuary of the number of groups or individuals and a description of the types of groups or individuals whose premium rates may change by more than 10% due to the proposed change in rating method (not including general increases in premium rates applicable to all small employers in a health benefit plan);

(D) a certification from a qualified actuary that the new rating method would be based on objective and credible data and would be actuarially sound and appropriate; and

(E) a certification from a qualified actuary that the proposed change in rating method would not produce premium rates for small employers that would be in violation of the Insurance Code, Chapter 26, Subchapter D.

(2) For the purpose of this section a change in rating method shall mean:

(A) a change in the number of case characteristics used by a small employer carrier to determine premium rates for health benefit plans in a class of business;

(B) a change in the manner or procedures by which insureds are assigned into categories for the purpose of applying a case characteristic to determine premium rates for health benefit plans in a class of business;

(C) a change in the method of allocating expenses among health benefit plans in a class of business; or

(D) a change in a rating factor with respect to any case characteristic if the change would produce a change in premium for any small employer that exceeds 10%. For the purpose of this paragraph, a change in a rating factor shall mean the cumulative change with respect to such factor considered over a 12-month period. If a small employer carrier changes rating factors with respect to more than one case characteristic in a 12-month period, the health carrier shall consider the cumulative effect of all such changes in applying the 10% test under this paragraph.

(c) Each rate manual developed pursuant to subsection (a) of this section shall specify the case characteristics and rate factors to be applied by the small employer carrier in establishing premium rates for the class of business.

(1) A small employer carrier may not use case characteristics other than those specified in the Insurance Code, Article 26.36(c), without the prior approval of the commissioner. A small employer carrier seeking such an approval shall make a filing with the commissioner for a change in rating method under subsection (b) of this section.

(2) A small employer carrier shall use the same case characteristics in establishing premium rates for each health benefit plan in a class of business and shall apply them in the same manner in establishing premium rates for each such health benefit plan. Case characteristics may include the employer's industry classification consistent with the Insurance Code, Article 26.33(c). Case characteristics shall be applied without regard to the risk characteristics of a small employer.

(3) The rate manual developed pursuant to subsection (a) of this section shall clearly illustrate the relationship among the base premium rates charged for each health benefit plan in the class of business. If the new business premium rate is different than the base premium rate for a health benefit plan, the rate manual shall illustrate the difference.

(4) Differences among base premium rates for health benefit plans shall be based solely on the reasonable and objective differences in the design and benefits of the health benefit plans and shall not be based in any way on the actual or expected health status related factors of the small employer groups that choose or are expected to choose a particular health benefit plan. A small employer carrier shall apply case characteristics and rate factors within a class of business in a manner that assures that premium differences among health benefit plans for identical small employer groups vary only due to reasonable and objective differences in the design and benefits of the health benefit plans and are not due to the actual or expected health status related factors of the small employer groups that choose or are expected to choose a particular health benefit plan.

(5) Each rate manual developed pursuant to subsection (a) of this section shall provide for premium rates to be developed in a two-step process. In the first step, the small employer carrier shall develop a base premium rate for the small employer group without regard to any risk characteristics of the group. In the second step, the small employer carrier may adjust the resulting base premium rate by the risk load of the group, subject to the provisions of Insurance Code, Chapter 26, Subchapter D, to reflect the risk characteristics of the group.

(6) Except as provided in this subsection, a premium charged to a small employer for a health benefit plan shall not include a separate application fee, underwriting fee, or any other separate fee or charge. A small employer carrier may charge a separate fee with respect to a health benefit plan (but only one fee with respect to such plan) provided the fee is no more than $5.00 per month per covered employee and is applied in a uniform manner to each health benefit plan in a class of business.

(7) A small employer carrier shall allocate administrative expenses to the small employer health benefit plans on no less favorable of a basis than expenses are allocated to other health benefit plans in the class of business. The rate manual developed pursuant to subsection (a) of this section shall describe the method of allocating administrative expenses to the health benefit plans in the class of business for which the manual was developed.

(8) The health carrier shall retain each rate manual developed pursuant to subsection (a) of this section for a period of six years. The health carrier shall maintain all updates and changes with the manual.

(9) Each rate manual and the rating practices of a small employer carrier shall comply with any applicable rules.

(d) If a small employer carrier uses the number of employees and dependents of a small employer as a case characteristic, the highest rate factor associated with a classification based on the number of employees and dependents of a small employer shall not exceed the lowest rate factor associated with such a classification by more than 20%.

(e) The restrictions related to changes in premium rates in the Insurance Code, Article 26.33 and Article 26.34, shall be applied as follows.

(1) A small employer carrier shall revise its rate manuals each rating period to reflect changes in base premium rates and changes in new business premium rates.

(2) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate is less than or the same as the percentage change in the base premium rate, the change in the new business premium rate shall be deemed to be the change in the base premium rate for the purposes of the Insurance Code, Article 26.33 and Article 26.34.

(3) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate exceeds the percentage change in the base premium rate, the health benefit plan shall be considered a health benefit plan into which the small employer carrier is no longer enrolling new small employers for the purposes of the Insurance Code, Article 26.33 and Article 26.34.

(4) If, for any rating period, the change in the new business premium rate for a health benefit plan differs from the change in the new business premium rate for any other health benefit plan in the same class of business by more than 20%, the health carrier shall make a filing with the commissioner containing a complete explanation of how the respective changes in new business premium rates were established and the reason for the difference. The filing shall be made at least 60 days prior to the beginning of the rating period when the change would be applicable. The filing is for the purpose of allowing

the commissioner to determine whether the methodology used is actuarially sound and appropriate to insure compliance with the Insurance Code, Chapter 26.

(5) A small employer carrier shall keep on file for a period of at least six years the calculations used to determine the change in base premium rates and new business premium rates for each health benefit plan for each rating period.

(f) Changes in premium rates and revised premium rates shall comply with the following.

(1) Except as provided in subsection (e) of this section, a change in premium rate for a small employer shall produce a revised premium rate that is no more than the base premium rate for the small employer (as shown in the rate manual as revised for the rating period), multiplied by one plus the sum of:

(A) the risk load applicable to the small employer during the previous rating period; and

(B) 15% (prorated for periods of less than one year).

(2) In the case of a health benefit plan into which a small employer carrier is no longer enrolling new small employers, a change in premium rate for a small employer shall produce a revised premium rate that is no more than the base premium rate for the small employer (given its present composition and as shown in the rate manual in effect for the small employer at the beginning of the previous rating period), multiplied by one plus the lesser of:

(A) the change in the base rate; or

(B) the percentage change in the new business premium for the most similar health benefit plan into which the small employer carrier is enrolling new small employers, multiplied by one plus the sum of:

(i) the risk load applicable to the small employer during the previous rating period; and

(ii) 15% (prorated for periods of less than one year).

(3) In the case of a health benefit plan described in the Insurance Code, Article 26.33(c), if the current premium rate for the health benefit plan exceeds the ranges set forth in the Insurance Code, Article 26.32(b), the formulae set forth in paragraphs (1) and (2) of this subsection will be applied as if the 15% adjustment provided in paragraphs (1)(B)(ii) and (2)(C)(ii) of this subsection were a 0% adjustment.

(4) Notwithstanding the provisions of paragraphs (1) and (2) of this subsection, a change in premium rate for a small employer shall not produce a revised premium rate that would exceed the limitations on rates provided in the Insurance Code, Article 26.32(c).

(g) An HMO offering any state approved, federally qualified plan described in Insurance Code Article 26.48 and §26.14 of this chapter (relating to Coverage) shall establish premium rates for those plans in accordance with formulae or schedules of charges filed with the department under the procedures set forth in Insurance Code Article 20A.09(b), and Chapter 11, Subchapter H of this title (relating to Schedule of Charges). An HMO shall follow the rating requirements set out in this section for any plan it offers that is not federally qualified.

(h) An HMO participating in a purchasing cooperative that provides employees of small employers a choice of benefit plans, that has established a separate class of business as provided by the Insurance Code, Article 26.31, and that has established a separate line of business as provided under the Insurance Code, Article 26.48(a), and 42 United States Code §§300e et seq. may use rating methods in accordance with this subchapter that are used by other small employer carriers participating in the same purchasing cooperative, including rating by age and gender. This subsection applies to all employer health benefit plans offered, issued or delivered for issue to small employers and their employees on or after September 1, 1995.

(i) When seeking to obtain information relating to a small employer group, including the risk characteristics of the small employer group, a small employer carrier shall comply with §26.13(m) of this chapter (relating to Rules Related to Fair Marketing).

§26.13. Rules Related to Fair Marketing.

(a) A small employer carrier shall market each of its small employer health benefit plans to small employers in this state. A small employer carrier may not suspend the marketing or issuance of the small employer benefit plans unless the health carrier has good cause and has received the prior approval of the commissioner or the commissioner's designee. In marketing consumer choice health benefit plans to small employers, a small employer carrier shall use at least the same sources and methods of distribution that it uses to market other small employer health benefit plans to small employers. Any agent authorized by a small employer carrier to market health benefit plans to small employers in this state shall also be authorized to market the small employer health benefit plans.

(b) To each small employer who inquires about purchasing a small employer health benefit plan, a small employer carrier shall offer the employer a choice of health benefit plans as required by §26.14 of this chapter (relating to Coverage). The small employer carrier may provide the offer directly to the small employer or deliver it through an agent, but in either case shall offer each required plan contemporaneously with the offer of any other small employer health benefit plan. The offer shall be in writing and shall include at least the following:

(1) information describing how the small employer may enroll in the plan or plans;

(2) information set out in Insurance Code Article 26.40 and §26.12 of this chapter (relating to Disclosure); and

(3) a written disclosure, as required by §21.3530 of this title (relating to Health Carrier Disclosure).

(c) Upon request, a small employer carrier shall explain to a small employer each of the small employer health benefit plans it offers.

(d) As required by §21.3542(a) of this title (relating to Offer of State-Mandated Plan), a small employer carrier shall obtain from each small employer to which it issues coverage, at or before the time of application, a written affirmation that the small employer carrier offered the small employer a consumer choice health benefit plan and a comparable policy or plan as required by Insurance Code Articles 3.80, §8 and 20A.9N(k).

(e) A small employer carrier shall comply with this subsection when providing a premium rate quote to a small employer.

(1) A small employer carrier shall provide a premium rate quote to a small employer, directly or through an authorized agent, within 15 business days of receiving the small employer's completed application for coverage and individual enrollment forms.

(2) A small employer carrier may request, directly or through an authorized agent, any additional information, using the applicable rate manual and associated underwriting guidelines developed pursuant to §26.11 of this chapter (relating to Restrictions Relating to Premium Rates), necessary to provide the premium rate quote. If the carrier requests this additional information prior to the end of the 15-day period described in paragraph (1) of this

subsection, the request for additional information tolls the running of the 15-day period until the small employer carrier receives the requested additional information.

(3) A small employer carrier may give a small employer an estimated cost of coverage prior to end of the 15-day period described in paragraph (1) of this subsection, so long as the carrier makes clear that the estimate is not a premium rate quote.

(4) A small employer carrier shall not impose any additional conditions to its provision of a premium rate quote.

(f) A small employer carrier shall not apply more stringent or detailed requirements related to the application process, or otherwise discriminate in the offer of, any small employer health benefit plan than are applied for other health benefit plans offered by the health carrier to small employers.

(g) If a small employer carrier denies coverage under a health benefit plan to a small employer on any basis, the denial shall be in writing and shall state with specificity the reasons for the denial (subject to any restrictions related to confidentiality of medical information).

(h) A small employer carrier shall establish and maintain a means to provide information to small employers who request information on the availability of small employer health benefit plans in this state. The information provided to small employers shall include information about how to apply for coverage from the health carrier and may include the names and phone numbers of agents located geographically proximate to the caller or such other information that is reasonably designed to assist the caller to locate an authorized agent or to otherwise apply for coverage.

(i) The small employer carrier shall not require a small employer to join or contribute to any association or group as a condition of being accepted for coverage by the small employer carrier, except that, if membership in an association or other group is a requirement for accepting a small employer into a particular health benefit plan, a small employer carrier may apply such requirement, subject to the requirements of Insurance Code, Chapter 26, Subchapters A - G.

(j) A small employer carrier may not require, as a condition to the offer or sale of a health benefit plan to a small employer, that the small employer purchase or qualify for any other insurance product or service.

(k) Health carriers offering individual and group health benefit plans in this state shall be responsible for determining whether the plans are subject to the requirements of Insurance Code, Chapter 26, Subchapters A - G, and this subchapter. Health carriers shall elicit the following information from applicants for such plans at the time of application:

(1) whether any portion of the premium will be paid by a small employer;

(2) whether the prospective policyholder, certificate holder, or any prospective insured individual intends to treat the health benefit plan as part of a plan or program under §162 or §106 of the United States Internal Revenue Code of 1986 (26 United States Code §106 or §162);

(3) whether the health benefit plan is an employee welfare benefit plan under 29 CFR §2510.3-1(j); or

(4) whether the applicant is a small employer.

(l) If a health carrier fails to comply with subsection (k) of this section, the health carrier shall be deemed to be on notice of any information that could reasonably have been attained if the health carrier had complied with subsection (k) of this section.

(m) A small employer carrier may not discriminate between small employer groups when obtaining information relating to a small employer, including information related to the risk characteristics of the small employer group or other aspects of the application or application process.

(n) A small employer carrier may not terminate, fail to renew, limit its contract or agreement of representation with, or take any other negative action against an agent for the agent's request that the carrier issue or renew a health benefit plan to a small employer.

§26.20. Reporting Requirements.

(a) Small employer health carriers offering a small employer health benefit plan shall file annually, not later than March 1 of each year, an actuarial certification Form Number 1212 CERT ACTUARIAL, stating that the underwriting and rating methods of the small employer carrier:

(1) comply with accepted actuarial practices;

(2) are uniformly applied to each small employer health benefit plan covering a small employer; and

(3) comply with the provisions of the Insurance Code, Chapter 26, Subchapters A - G, and this chapter.

(b) Not later than March 1 of each calendar year, a small employer carrier shall complete and file with the commissioner Form Number 1212 CERT DATA. This annual filing shall include the following information related to health benefit plans issued by the small employer carrier to small employers in this state:

(1) the number of small employers that were issued and the number of lives that were covered under health benefit plans in the previous calendar year (separated, if applicable, as to newly issued plans and renewals);

(2) the number of small employers that were issued and the number of lives that were covered under consumer choice health benefit plans, plans offering all state-mandated health benefits, HMO consumer choice health benefit plans and HMO plans including all state-mandated health benefits in the previous calendar year (as applicable, separated as to newly issued plans and renewals and by groups based on the following covered-employee size ranges: 2 - 9, 10 - 20, 21 - 35, and 36 - 50);

(3) a copy of the certificate of coverage for each of the carrier's three (if applicable) most frequently issued consumer choice health benefit plans. Each certificate must illustrate the selected benefits and plan features without variability;

(4) the number of small employer health benefit plans in force and the number of lives covered under those plans. This information should be broken down by the zip code of the small employers' principal place of business in the state of Texas;

(5) the number of small employer health benefit plans that were voluntarily not renewed by small employers in the previous calendar year;

(6) the number of small employer health benefit plans that were terminated or nonrenewed (for reasons other than nonpayment of premium) by the health carrier in the previous calendar year;

(7) the number of small employer health benefit plans that were issued to small employers that were uninsured for at least the two months prior to issue;

(8) the health carrier's gross premiums derived from health benefit plans delivered, issued for delivery, or renewed to small employers in the previous calendar year. For purposes of this subsection,

gross premiums shall be the total amount of monies collected by the health carrier for health benefit plans during the applicable calendar year or the applicable calendar quarter. Gross premiums shall include premiums collected for individual and group health benefit plans issued to small employers or their employees. Gross premiums shall also include premiums collected under certificates issued or delivered to employees (in this state) of small employers, regardless of where the policy is issued or delivered;

(9) if applicable, information regarding any small employer health benefit plans assumed from another small employer carrier; and

(10) the number of small employers and the number of lives that were covered under plans issued to small employer health coalitions in the previous calendar year (as applicable, separated as to newly issued plans and renewals).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. LARGE EMPLOYER HEALTH INSURANCE PORTABILITY AND AVAILABILITY ACT REGULATION

28 TAC §§26.301 - 26.309, 26.311, 26.312

The amendments are adopted under Insurance Code Article 26.04, HIPAA, and Insurance Code §36.001. Chapter 26 of the Insurance Code implements provisions regarding small and large employers which were necessary to comply with the federal requirements contained in HIPAA. Article 26.04 requires the commissioner to adopt rules as necessary to implement the Insurance Code, Chapter 26, and to meet the minimum requirements of federal law and regulations which, for small and large employer health carriers, are contained in HIPAA. Federal agencies have adopted regulations implementing HIPAA as follows: Department of the Treasury, 26 CFR Part 54; Department of Labor, 29 CFR Part 2590; and Department of Health and Human Services, 45 CFR Part 144 and Part 146. As identified in the Introduction, portions of the Federal Regulations are included in these rules as necessary to meet the minimum requirements of federal law. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§26.304. Requirement to Insure Entire Groups.

(a) A large employer carrier that offers coverage to a large employer and its employees shall offer to provide coverage to each eligible employee who meets the large employer's participation criteria. If dependent coverage is offered to enrollees under a large employer health benefit plan, then a large employer carrier shall offer to provide coverage to each eligible dependent. Except as provided in subsection (b) of this section, the large employer carrier shall provide the same health benefit plan to each such employee and dependent.

(b) If elected by the large employer, a large employer carrier may offer the eligible employees of a large employer, who meet the participation criteria, the option of choosing among one or more health benefit plans, provided that each eligible employee who meets the participation criteria may choose any of the plans offered to the employee. Except as provided in the Insurance Code, Articles 26.83 and 26.90 (with respect to an affiliation period or exclusions for preexisting conditions), the choice among benefit plans may not be limited, restricted, or conditioned based upon the health status related factors of the eligible employees or their dependents, if applicable.

(c) A large employer carrier may require each large employer that applies for coverage, as part of the application process, to provide a complete list of employees, eligible employees, and if dependent coverage is offered to enrollees under a large employer health benefit plan, a complete list of dependents of eligible employees as defined in Insurance Code Article 26.02. The large employer carrier may also require the large employer to provide reasonable and appropriate supporting documentation to verify the information required under this subsection, as well as to confirm the applicant's status as a large employer. The large employer carrier shall make a determination of eligibility within five business days of receipt of any requested documentation. A large employer carrier may not condition the issuance of coverage on an employer's production of a particular document, where the employer can otherwise provide the information required by this section. Similarly, if a particular document an employer produces does not reasonably evidence the employer's compliance with this subsection, the employer must produce other documentation to satisfy the requirements. Following are examples of the types of supporting documentation which a large employer carrier may request, as reasonable and appropriate, from an employer as needed to fulfill the purposes of this subsection.

(1) a W-2 Summary Wage and Tax Form or other federal or state tax records;

(2) a loan agreement;

(3) an invoice;

(4) a business check;

(5) a sales tax license;

(6) articles of incorporation or other business entity filings with the Secretary of State;

(7) assumed name filings;

(8) professional licenses; and

(9) reports required by the Texas Workforce Commission.

(d) A large employer carrier shall not deny two individuals that are married the status of eligible employee solely on the basis that the two individuals are married. The large employer carrier shall provide a reasonable opportunity for the individuals to submit evidence as provided in subsection (c) of this section to establish each individual's status as an eligible employee.

(1) The two individuals will not be eligible for coverage as a dependent. Each must be covered as an employee.

(2) A child of either of the two individuals may only be covered under the same large employer health benefit plan as a dependent by one of the two individuals.

(e) New entrants who meet the large employer's participation criteria in a health benefit plan issued to a large employer group shall be offered an opportunity to enroll in the health benefit plan currently held by such employer group or shall be offered an opportunity to enroll in the health benefit plan if the plan is provided through an individual franchise policy or more than one plan is available. If a large employer carrier has offered more than one health benefit plan to eligible employees of a large employer group pursuant to subsection (b) of this section, the new entrant shall be offered the same choice of health benefit plans as the other employees (members) in the group. A new entrant that does not exercise the opportunity to enroll in the health benefit plan within the period provided by the large employer carrier may be treated as a late enrollee by the health carrier, provided that the period provided to enroll in the health benefit plan complies with §26.305(a) of this title (relating to Enrollment).

(f) New entrants meeting the participation criteria in a health benefit plan issued to a large employer group shall be accepted for coverage by the large employer carrier without any restrictions or limitations on coverage related to the health status related factors of the employees or their dependents, if applicable, except that a health carrier may exclude coverage for pre-existing medical conditions or impose an affiliation period, to the extent allowed under Insurance Code, Articles 26.83 and 26.90.

(g) In the case of an eligible employee that meets the participation criteria (or dependent of an eligible employee, if applicable) who was excluded from coverage, not eligible for coverage, denied coverage by a large employer carrier, or in the process of providing a health benefit plan to an eligible large employer, the large employer carrier shall provide an opportunity for the eligible employee that meets the participation criteria (or dependent(s) of such eligible employee) to enroll in the health benefit plan issued to the large employer or the employees of the large employer on the earlier of the first renewal date occurring on or after July 1, 1997, or the first open enrollment period occurring on or after July 1, 1997. The opportunity to enroll shall meet the following requirements:

(1) The opportunity to enroll under this subsection shall comply with §26.305(a) of this title.

(2) Eligible employees that meet the large employer's participation criteria and dependents of eligible employees who are provided an opportunity to enroll pursuant to this subsection shall be treated as new entrants.

(3) The terms of coverage offered to an individual described in this subsection may exclude coverage for preexisting conditions or impose an affiliation period only if the health benefit plan currently held by the large employer contains such an exclusion or an affiliation period.

(4) A large employer carrier shall provide written notice at least 45 days prior to the opportunity to enroll provided in this subsection or if less than 45 days are available, within five working days after determination that subsections (e) - (g) of this section apply to each large employer insured under a health benefit plan offered by such health carrier. A large employer carrier may provide the notice to the employer if the carrier has entered into an agreement with the employer to provide the notice to the employees. The notice shall clearly describe the rights granted under subsections (e) - (g) of this section to employees and dependents who were previously excluded from, not eligible for, or denied coverage and the process for enrollment of such individuals in the employer's health benefit plan.

(h) A large employer carrier may require an individual who requests enrollment under subsection (g) of this section to sign a statement indicating that such individual sought coverage under the group contract or franchise policy (other than as a late enrollee) and that the coverage was not offered or provided to the individual.

§26.306. Exclusions, Limitations, Waiting Periods, Affiliation Periods and Preexisting Conditions and Restrictive Riders.

(a) A large employer carrier may not exclude any eligible employee who meets the participation criteria or an eligible dependent, if dependent coverage is offered to enrollees under a large employer health benefit plan (including a late enrollee, who would otherwise be covered under a large employer's health benefit plan), except to the extent permitted under Insurance Code Articles 26.83 and 26.90.

(b) A preexisting condition provision in a large employer health benefit plan may not apply to expenses incurred on or after the expiration of the 12 months following the effective date of coverage of the enrollee or late enrollee, except as authorized by subsection (h)(2) of this section.

(c) A preexisting condition provision in a large employer health benefit plan may not apply to coverage for a disease or condition other than a disease or condition for which medical advice, diagnosis, care, or treatment was recommended or received from an individual licensed to provide such services under state law and operating within the scope of practice authorized by state law during the six months before the effective date of coverage.

(d) A large employer carrier shall not treat genetic information as a preexisting condition described by Insurance Code, Article 26.90(b) in the absence of a diagnosis of the condition related to the information.

(e) A large employer carrier shall not treat a pregnancy as a preexisting condition described by Insurance Code, Article 26.90(b).

(f) A preexisting condition provision in a large employer health benefit plan shall not apply to an individual who was continuously covered for an aggregate period of 12 months under creditable coverage that was in effect up to a date not more than 63 days before the effective date of coverage under the large employer health benefit plan, excluding any waiting period. For example, Individual A has coverage under an individual policy for 6 months beginning on May 1, 1997, through October 31, 1997, followed by a gap in coverage of 61 days until December 31, 1997. Individual A is covered under an individual health plan beginning on January 1, 1998, for 6 months through June 30, 1998, followed by a gap in coverage of 62 days until August 31, 1998. The effective date of Individual A's coverage under a large employer health benefit plan is September 1, 1998. Individual A has 12 months of creditable coverage and would not be subject to a preexisting condition exclusion under the large employer health benefit plan.

(g) In determining whether a preexisting condition provision applies to an individual covered by a large employer benefit plan, the large employer carrier shall credit the time the individual was covered under previous creditable coverage if the previous coverage was in effect at any time during the 12 months preceding the effective date of coverage under a large employer health benefit plan. If the previous coverage was issued under a health benefit plan, any waiting period that applied before that coverage became effective also shall be credited against the preexisting condition provision period. For instance, Individual B is covered under an individual health insurance policy for 18 months beginning May 1, 1995, through November 30, 1996, followed by a four month gap in coverage from December 1, 1996, to March 31, 1997. On April 1, 1997, Individual B is covered under a group health plan for three months through June 30, 1997, followed by a two month gap in coverage until August 31, 1997. The effective date of Individual B's coverage under a large employer health insurance policy is September 1, 1997. Under this example, since there was

a significant break in coverage, to determine the length of creditable coverage, the large employer carrier counts the creditable coverage the individual had for the 12 month period preceding the effective date of the individual's coverage under the large employer plan. Individual B has creditable coverage of six months and the issuer of the large employer health benefit plan may impose a preexisting condition limitation for six months on Individual B.

(h) A large employer carrier shall choose one of the methods set forth in paragraph (1) or (2) of this subsection for handling requests for enrollment from a late applicant in any health benefit plan subject to this subchapter. The large employer carrier must use the same method in regards to all such health benefit plans.

(1) The employee or dependent may be excluded from coverage and any application for coverage rejected until the next annual open enrollment period and, upon enrollment, may be subject to a 12-month preexisting condition provision, or, in the case of an HMO, may be subject to a 60-day affiliation provision, as such provisions are described by Insurance Code Article 26.90.

(2) The employee or dependent's application may be accepted immediately and the employee or dependent enrolled as a late enrollee during the plan year, in which case the preexisting condition provision imposed for a late enrollee may not exceed 18 months or, in the case of an HMO, the affiliation period may not exceed 90 days, from the date of the late enrollee's application for coverage.

(3) The provisions of paragraphs (1) and (2) of this subsection do not apply to employees or dependents under the special circumstances listed as exceptions under the definition of late enrollee in §26.4 of this chapter (relating to Definitions).

(4) Examples for applying subparagraphs (A) and (B) of this paragraph, in the case of both insurers and HMOs: Individual A requests coverage on October 1, 1997, after the enrollment period of July 1, 1997, through July 31, 1997 has ended. The next annual open enrollment period is July 1, 1998, through July 31, 1998. The effective date of coverage for persons enrolling during an open enrollment period is the beginning of the plan year, which is September 1 of each year.

(A) If the carrier is an insurer and has elected to exclude all applicants requesting late enrollment under health benefit plans subject to this subchapter until the next open enrollment period, Individual A must reapply for coverage in July 1998 and the carrier may apply up to a 12-month preexisting condition period from the effective date of coverage, as with any other enrollee, the preexisting condition period would begin on September 1, 1998, and expires on September 1, 1999.

(B) If the carrier is an insurer and has elected to accept applications for late enrollment under health benefit plans subject to this subchapter immediately and enroll the applicant during the plan year, then the carrier may apply up to an 18-month preexisting condition period from the date of application. If Individual A applied for coverage on October 1, 1997, the preexisting condition period would begin on that date and would expire on April 1, 1999.

(C) If the carrier is an HMO and has elected to exclude all applicants requesting late enrollment under health benefit plans subject to this subchapter until the next open enrollment period, Individual A must reapply for coverage in July 1998 and the carrier may apply up to a 60-day affiliation period, as with any other enrollee.

(D) If the carrier is an HMO and has elected to accept applications for late enrollment under health benefit plans subject to this subchapter immediately and enroll the applicant during the plan year, then the carrier may apply up to a 90-day affiliation period from the day Individual A applied for coverage.

(i) A health maintenance organization may impose an affiliation period if the period is applied uniformly to each enrollee without regard to any health status related factor. The affiliation period shall not exceed two months for an enrollee, other than a late enrollee, and shall not exceed 90 days for a late enrollee. An affiliation period under a plan shall run concurrently with any applicable waiting period under the plan. An HMO shall not impose any preexisting condition limitation, except for an affiliation period.

(j) A large employer may establish a waiting period applicable to all new entrants under the health benefit plan during which a new employee is not eligible for coverage. The large employer shall determine the duration of the waiting period. A large employer carrier shall not apply a waiting period, elimination period, or other similar limitation of coverage (other than an exclusion for preexisting medical conditions or impose an affiliation period consistent with Insurance Code Articles 26.83 and 26.90), with respect to a new entrant, that is longer than the waiting period established by the large employer. Upon completion of the waiting period and enrollment within the time frame allowed by §26.305(a) of this chapter (relating to Enrollment), coverage must be effective no later than the next premium due date. Coverage may be effective at an earlier date as agreed upon by the large employer and the large employer carrier.

(k) A large employer health benefit plan may not, by use of a rider or amendment applicable to a specific individual, limit or exclude coverage by type of illness, treatment, medical condition, or accident, except for a preexisting condition or affiliation period permitted under Insurance Code, Articles 26.83 and 26.90.

(l) To determine if preexisting conditions as defined in Insurance Code Article 26.02(23) exist, a large employer carrier shall ascertain the source of previous or existing coverage of each eligible employee meeting the participation criteria and each dependent of an eligible employee at the time such employee or dependent initially enrolls into the health benefit plan provided by the large employer carrier. The large employer carrier shall have the responsibility to contact the source of such previous or existing coverage to resolve any questions about the benefits or limitations related to such previous or existing coverage in the absence of a creditable coverage certification form.

§26.307. Fair Marketing.

(a) Upon request, each large employer purchasing health benefit plans shall be given a summary of all plans for which the employer is eligible.

(b) Denial by a large employer carrier of an application for coverage or cancellation, or refusal to renew must be in writing and must state with specificity the reasons for the denial, cancellation, or refusal to renew (subject to any restrictions related to confidentiality of medical information). The large employer carrier shall notify the large employer in accordance with Insurance Code, Articles 26.87 and 26.88.

(c) A large employer carrier may not require, as a condition to the offer or sale of a health benefit plan to a large employer, that the large employer purchase or qualify for any other insurance product or service.

(d) The large employer carrier shall not require a large employer to join or contribute to any association or group as a condition of being accepted for coverage by the large employer carrier, except that, if membership in an association or other group is a requirement for accepting a large employer into a particular health benefit plan, a large employer carrier may apply such requirement, subject to the requirements of the Insurance Code, Chapter 26, Subchapters A and H.

(e) Health carriers offering individual and group health benefit plans in this state shall be responsible for determining whether the plans are subject to the requirements of the Insurance Code, Chapter 26, Subchapters A and H, and this subchapter. Health carriers shall elicit the following information from applicants for such plans at the time of application:

(1) whether any portion of the premium will be paid by a large employer;

(2) whether the prospective policyholder, certificate holder, or any prospective insured individual intends to treat the health benefit plan as part of a plan or program under §162 or §106 of the United States Internal Revenue Code of 1986 (26 United States Code §106 or §162);

(3) whether the health plan is an employee welfare benefit plan under 29 CFR §2510.3-1(i); or

(4) whether the applicant is a large employer.

(f) If a health carrier fails to comply with subsection (e) of this section, the health carrier shall be deemed to be on notice of any information that could reasonably have been attained if the health carrier had complied with subsection (e) of this section.

(g) A large employer carrier may not terminate, fail to renew, limit its contract or agreement of representation with, or take any other negative action against an agent for any reason related to the agent's request that the carrier issue or renew a health benefit plan to a large employer.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 26. SMALL EMPLOYER HEALTH INSURANCE REGULATIONS

SUBCHAPTER A. SMALL EMPLOYER HEALTH INSURANCE PORTABILITY AND AVAILABILITY ACT REGULATIONS

28 TAC §26.14, §26.27

The Commissioner of Insurance adopts the repeal of §26.14 and §26.27, concerning small and large employer health insurance regulations. The repeal is adopted without changes to the proposal as published in the November 12, 2004, issue of the *Texas Register* (29 TexReg 10441).

The repeal of the sections is necessary so that Chapter 26 of the department's rules will conform to current statutory requirements.

Contemporaneously with this repeal, adopted new §26.14 and §26.27 and amendments to §§26.4 - 26.11, 26.13, 26.15, 26.16, 26.18 - 26.20, 26.22, 26.24, 26.26, 26.301 - 26.309, 26.311, and 26.312 are published elsewhere in this issue of the *Texas Register*.

The repealed sections are replaced by new §26.14 and §26.27 which will, in conjunction with other amendments adopted to Chapter 26 that are published elsewhere in this issue of the *Texas Register*, assure that Chapter 26 of the department's rules conform to current statutory requirements

No comments were received regarding the repeal.

The repeal of §26.14 and §26.27 is adopted pursuant to Insurance Code Chapter 1153 and §36.001. Chapter 1153 gives the Commissioner of Insurance authority to set presumptive premium rates by rule for credit life and accident and health policies. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 55. LAW ENFORCEMENT

SUBCHAPTER E. PERMITS FOR AERIAL MANAGEMENT OF WILDLIFE AND EXOTIC SPECIES

31 TAC §§55.141 - 55.153

The Texas Parks and Wildlife Commission adopts the repeal of §§55.141 - 55.153, concerning Permits for Aerial Management of Wildlife and Exotic Species, without changes to the proposed text as published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11556).

The repeals are necessary as a result of the department's review process under the provisions of Government Code, §2001.039, which requires each state agency to perform a review of all regulations not less than every four years and to either readopt, amend, or repeal each rule as necessary and appropriate. As a result of the review, the department relocated the aerial management rules to Chapter 65, concerning Wildlife, which necessitates the repeals in Chapter 55. The notice of adoption affecting Chapter 65 appears elsewhere in this issue. The effect of the repeals is nonsubstantive.

The repeals will function by removing the rules governing aerial management from Chapter 55.

The department received no comments concerning adoption of the proposed repeals.

The repeals are adopted under Parks and Wildlife Code, §43.109, which authorizes the commission to make regulations governing management of wildlife or exotic animals by the use of aircraft.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 59. PARKS
SUBCHAPTER B. LOCAL PARK PLANNING ASSISTANCE

31 TAC §59.10

The Texas Parks and Wildlife Commission adopts an amendment to §59.10, concerning eligibility requirements for local park planning assistance, without changes to the proposed text as published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11556).

The amendment is necessary as a result of the department's review process under the provisions of Government Code, §2001.039, which requires each state agency to perform a review of all regulations not less than every four years and to either readopt, amend, or repeal each rule as necessary and appropriate. As a result of the review, the department determined that the population thresholds in the rule should be consistent with those stipulated in the department's small community grant rules. Additionally, the wording of the rule has been reworked to make clear that a community of less than 20,000 in population is eligible even if it is located in a county of greater than 20,000 in population.

The rule will function by establishing the maximum population thresholds for communities and counties to be eligible for park planning assistance.

The department received no comments concerning adoption of the proposed rule.

The rule is adopted under Parks and Wildlife Code, §24.005, which requires the commission to adopt rules and regulations for grant assistance.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 65. WILDLIFE
SUBCHAPTER F. PERMITS FOR AERIAL MANAGEMENT OF WILDLIFE AND EXOTIC SPECIES

31 TAC §§65.150 - 65.162

The Texas Parks and Wildlife Commission adopts new §§65.150-65.162, concerning Permits for Aerial Management of Wildlife and Exotic Species, without changes to the proposed text as published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11558).

The new sections are necessary as a result of the department's review process under the provisions of Government Code, §2001.039, which requires each state agency to perform a review of all regulations not less than every four years and to either readopt, amend, or repeal each rule as necessary and appropriate. As a result of the review, the department is repealing the aerial management rules from Chapter 55, concerning Law Enforcement, and moving them to Chapter 65, concerning Wildlife. A notice of adoption concerning Chapter 55, Subchapter E, appears elsewhere in this issue. The effect of the rulemaking is nonsubstantive, although the new rules have been slightly modified to increase accuracy, modernize references, and increase clarity.

New §65.151, concerning Definitions, will function by establishing unambiguous meanings for various words and terms used in the subchapter.

New §65.152, concerning General Rules, will function by authorizing permit activities, requiring pilots to maintain logs and records, and delineating prohibited acts.

New §65.153, concerning Application for Permit, will function by prescribing the form of and information required on an application for a permit under the subchapter.

New §65.154, concerning Issuance of Permit, will function by specifying the conditions under which the department will issue a permit, the provisos understood between the applicant and the department with regard to permit use, and the form and content of the permit.

New §65.155, concerning Period of Validity of Permit, will function by establishing the length of time that a permit has lawful effect.

New §65.156, concerning Amendment of Permit, will function by setting forth the procedural and notification requirements to be followed by permittees when permission to conduct additional or modified activities is sought.

New §65.157, concerning Renewal of Permit, will function by providing for renewal of permits and prescribes a minimum time

period prior to permit expiration for renewal applications to be submitted.

New §65.158, concerning Permit not Transferable, will function by providing that a permit cannot be transferred.

New §65.159, concerning Permit Fee, will function by providing for a fee to be assessed for a permit issued under the subchapter.

New §65.160, concerning Landowner Authorization, will function by prescribing the form and content of landowner permission for permit activities.

New §65.161, concerning Reports, will function by setting forth documentation requirements for permittees and establishes the content of required documentation.

New §65.162, concerning Penalty, will function by reiterating the statutory penalties for violation of the subchapter.

The department received no comments concerning adoption of the proposed rules.

The new rules are adopted under Parks and Wildlife Code, §43.109, which authorizes the commission to make regulations governing management of wildlife or exotic animals by the use of aircraft.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Proposal publication date: December 17, 2004
For further information, please call: (512) 389-4775

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CHAPTER 69. RESOURCE PROTECTION

The Texas Parks and Wildlife Commission adopts amendments to §§69.5 and 69.8, concerning Endangered, Threatened, and Native Plants; 69.19-69.21, and 69.24-69.27, concerning Fish and Wildlife Values; 69.46, concerning Application for Permit, 69.71, concerning Memorandum of Understanding; 69.77, concerning Health Certification of Native Shellfish; and 69.301 and 69.303, concerning Scientific, Educational, and Zoological Permits. Section 69.8, concerning Endangered and Threatened Plants, is adopted with changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11932). Sections 69.5, 69.19-69.21, 69.24-69.27, 69.46, 69.71, 69.77, 69.301, and 69.303 are adopted without changes and will not be republished.

The change to §69.8 corrects a misspelling. In the graphic accompanying subsection (a) the Pima pineapple cactus was inadvertently misspelled as the Pina pineapple cactus. The change corrects that error.

In general, the amendments are necessary as a result of the department's review process under the provisions of Government Code, §2001.039, which requires each state agency to perform a review of all regulations not less than every four years and to either readopt, amend, or repeal each rule as necessary and appropriate. As a result of the review, the department determined that rulemaking was necessary to correct outdated references, citations, and terminology.

The amendment to §69.5, concerning Commercial Plant Permit, will function by clarifying that a commercial plant permit is required for the take of endangered, threatened, and protected plants for commercial purposes on private lands, and by prescribing the use of a department-supplied application for permits and instituting a reporting requirement for permittees, all of which are necessary for the department to maintain accurate records of permitted activities.

The amendment to §69.8, concerning Endangered and Threatened Plants, will function by providing an accurate list of all species to which provisions concerning threatened and endangered plants apply. The amendment emends the list of threatened species to include Geocarpon minimum, and the list of endangered species to include Coryphantha scheeri var. robustispina (Pima pineapple cactus), each of which, respectively, is listed by the federal government and have been recently discovered in Texas. The amendment also corrects the list of endangered species to update the scientific names of the Tobusch fishhook cactus, the Nellie cory cactus, the Sneed pincushion cactus, and the Texas snowbell in order to conform the list with taxonomic changes. The amendment similarly amends the list of threatened species to update the scientific names of the Bunched cory cactus and the Lloyd's mariposa cactus, also to conform the list to taxonomic changes. The amendment is necessary to delineate the species of plants to which provisions governing threatened and endangered plants apply.

The amendment to §69.19, concerning Restitution and Restoration, will function by correcting an inaccurate legal citation to the Texas Water Code, which is necessary to prevent confusion and maintain coherent regulations.

The amendment to §69.20, concerning Application, will function by restructuring subsection (a)(2) for grammatical sense, which is necessary for ease of readability and comprehension.

The amendment to §69.21, concerning Definitions, will function by eliminating an explicit definition in favor of a generic reference to applicable state and federal lists. The amendment is necessary to preclude periodic rulemaking to amend legal citations.

The amendment to §69.24, concerning Basic Value, will function by eliminating a provision that is no longer applicable. That provision required red drum civil restitution values to be determined based on the market value of red drum raised in aquaculture facilities. When the civil restitution rules were first promulgated, restitution values for fish were calculated using values from a special publication of the American Fisheries Society. At that time, the special publication did not contain a value for red drum, so the department devised a substitute method for determining restitution value. The special publication now contains a value for red drum, so the previous provision is no longer necessary.

The amendment to §69.25, concerning Aquatic Life-Recovery Value, will function by increasing the clarity of subsection (c), which is necessary to improve readability.

The amendment to §69.26, concerning Commercial Species-Recovery Value, will function by eliminating a reference to Parks and Wildlife Code, §77.027 because that section was repealed under the terms of Senate Bill 1302, enacted by the 76th Texas

Legislature in 1999. The amendment is necessary to maintain accurate regulations.

The amendment to §69.27, concerning Updating Existing Recovery values, will function by stipulating that recovery values be updated as necessary, rather than on an annual basis as the previous rule required. The change was necessary because recovery values typically do not change on an annual basis.

The amendment to §69.46, concerning Application for Permit, will function by eliminating an unnecessary provision that allowed applicants for a rehabilitator's license to satisfy permit eligibility requirements by attending a department-sponsored rehabilitation conference. The department has not sponsored any wildlife rehabilitation conferences and does not have plans to do so in the future. The amendment is necessary to ensure that regulations are accurate.

The amendment to §69.71, concerning Memorandum of Understanding, will function by changing the section heading to clarify that the Memorandum of Understanding referenced in this rule is between TPWD and the Texas Department of Transportation. The amendment is necessary for increased clarity.

The amendment to §69.77, concerning Health Certification of Native Penaeid Shrimp, will function by altering the grammatical structure of subsection (a)(1) and (2), and is necessary to enhance the clarity and readability of the section.

The amendment to §69.301, concerning Definitions, will function by clarifying that 'protected wildlife' includes parts of protected wildlife. The amendment is necessary to make the rules consistent with other regulations of the department, such as those governing fur-bearing animals, and nongame wildlife.

The amendment to §69.303, concerning Application for Permit and Permit Issuance, will function by creating a more informative section heading and by clarifying that the department's right to refuse to issue a scientific, educational, or zoological permit includes subsequent permits in addition to the initial permit. The amendment is necessary because the department does not renew scientific, educational, or zoological permits, but requires individuals to reapply for a permit when the current permit expires.

The department received no comments concerning adoption of the proposed amendments.

SUBCHAPTER A. ENDANGERED, THREATENED, AND PROTECTED NATIVE PLANTS

31 TAC §69.5, §69.8

The amendments are adopted under the authority of Parks and Wildlife Code, §88.006, which requires the commission to adopt regulations to administer the provisions of Parks and Wildlife Code, Chapter 88.

§69.8. Endangered and Threatened Plants.

(a) The following plants are endangered:
Figure: 31 TAC §69.8(a)

(b) The following plants are threatened:
Figure: 31 TAC §69.8(b)

(c) Scientific reclassification or change in nomenclature of taxa at any level in the taxonomic hierarchy will not, in and of itself, affect the status of a species as endangered, threatened or protected.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 15, 2005.

TRD-200501146
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: April 4, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 389-4775

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SUBCHAPTER B. FISH AND WILDLIFE VALUES

31 TAC §§69.19 - 69.21, 69.24 - 69.27

The amendments are adopted under Parks and Wildlife Code, §12.302, which requires the commission to adopt rules to establish guidelines for determining the value of injured or destroyed fish, shellfish, reptiles, amphibians, birds, and animals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 15, 2005.

TRD-200501147
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: April 4, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 389-4775

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SUBCHAPTER C. WILDLIFE REHABILITATION PERMITS

31 TAC §69.46

The amendments are adopted under Parks and Wildlife Code, §43.022, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 15, 2005.

TRD-200501148
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: April 4, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 389-4775

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SUBCHAPTER D. MEMORANDUM OF UNDERSTANDING

31 TAC §69.71

The amendment is adopted under Transportation Code, §201.607, which requires the department to adopt by rule a memorandum of understanding with the Texas Department of Transportation and each state agency that is responsible for the protection of the natural environment or for the preservation of historical or archeological resources.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 15, 2005.

TRD-200501150
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: April 4, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 389-4775

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SUBCHAPTER F. HEALTH CERTIFICATION OF NATIVE SHELLFISH

31 TAC §69.77

The amendment is adopted under Parks and Wildlife Code, §66.007, which authorizes the commission to adopt rules to control a disease or agent of disease transmission that may affect penaeid shrimp species and has the potential to affect cultured species or other aquatic species.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 15, 2005.

TRD-200501151
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: April 4, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 389-4775

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SUBCHAPTER J. SCIENTIFIC, EDUCATIONAL, AND ZOOLOGICAL PERMITS

31 TAC §69.301, §69.303

The amendments are adopted under Parks and Wildlife Code, 43.022, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 15, 2005.

TRD-200501152
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: April 4, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 389-4775

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PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

The Texas Water Development Board (the board) adopts the repeal of existing §371.4 and amendments to §§371.14, 371.22, 371.24, and 371.51, concerning the Drinking Water State Revolving Fund without changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 470) and will not be republished.

The board repeals §371.4, Date of Applicability of Rules, relating to the term of the applicability of the rules. As currently written, §371.4 applies the provisions of this chapter to financial assistance applications received during federal fiscal years 1997 through 2003. At the time of adoption of this section, it was not anticipated that the board would continue to receive federal funds under this program. The board repeals this section so that these rules will continue to apply to all applications received under this program.

The board deletes §371.14(a)(3). This paragraph currently authorizes the board to make expenditures in federal fiscal years 1996 and 1997 to delineate and assess source water protection projects and providing that such funds must be obligated within four years of the rule adoption. The Texas Commission on Environmental Quality is the state agency responsible for this activity and has reported successfully completing these projects. Consequently, the board adopts the deletion of this provision as appropriate.

The board adopts an amendment to §371.22 concerning Administrative Cost Recovery to clarify that the administrative cost recovery fee is a non-refundable fee which is based on the amount of the loan at the time of closing. Though the existing language has been interpreted and applied by the board in this manner, this amendment is adopted in order to insure that loan recipients fully appreciate the nature of the fee payment.

The board adopts an amendment to §371.24(b)(7) concerning the determination of an area that is eligible for Loan Subsidies under the Disadvantaged Community Program. Currently, this paragraph calculates the adjusted median household income specifically using 1990 income data and requiring that such data be adjusted using the 1990 Texas Consumer Price Index. The board amends this paragraph to provide that the median household income may be determined from the most recent United

States Census data and that it will be adjusted using the most recent Texas Consumer Price Index.

The board adopts an amendment to §371.24(d) concerning additional project costs in excess of the project costs identified in the intended use plan. Currently, this subsection provides that project costs in excess of the project costs identified on the intended use plan will be provided through the Water Supply Account of the Texas Water Development Fund. With the creation of the Texas Water Development Fund II, the reference to the Water Supply Account is no longer appropriate. This subsection is adopted to reflect this change.

The board adopts an amendment to §371.51(c) concerning the commitment date of a loan made by the board. Currently, the intent of the rule is to identify a date certain by which time the applicant must close the loan with the board. This subsection, however, is entitled "Commitment Date" which is misleading since the subsection does not address the date on which the commitment is made by the board but rather the date by which the loan must be closed. The title of the subsection is therefore amended to be "Closing Date". Further, as currently written, the subsection requires that the closing date must occur 24 months from the day in the month of the board meeting at which the commitment was made. As applied, the applicant must close the loan or request an extension of the closing date before that day in the 24th month. If the board schedules its meeting on a day later in that 24th month, the applicant is effectively limited to closing the loan or requesting a time extension within 23 months rather than the intended 24 months. The board did not intend this result and does not make a similar requirement for its other programs. The board adopts an amendment to §371.51(c) so that the closing date must occur on any day within the 24th calendar month following the date that the board made the commitment. The intent of this amendment is that, as an example, if the board makes a commitment on April 15, 2005, the applicant must close the loan on any day in April 2007 or must request and obtain an extension of the closing date from the board at the board's meeting in April 2007. In this manner, the applicant receives the benefit of the full 24 calendar months in which to act on the commitment and makes this program consistent with the board's other programs relative to the closing date requirement. The board further amends this subsection by deleting the language relating to extending the time to close the loan so that it can be placed in a new subsection. The board adopts this amendment in order to improve the clarity of the respective requirements.

The board adopts a new subsection (d) to §371.51, relating to the extension of the closing date. As currently written, subsection (c) refers to extending the commitment date. However, since the commitment date is the date of the original board action, there is no action that can occur that can extend that date. The intention of the current provision, rather, is to extend the date by which the closing must occur. Further, as currently configured, two distinct requirements are combined in one sentence: the requirement to close the loan and the method to extend the closing date. This combination unnecessarily convolutes these requirements, which creates unnecessary ambiguity. By creating a new subsection, the two distinct requirements are separated in order to clarify the respective requirements. Additionally, the new subsection (d) now specifies that a request to extend the closing date must be submitted by the applicant in writing and identify a reasonable basis for the extension. These requirements are included because the board believes that it is important to the effective operation of the program to close these loans in a timely manner. Therefore, this new subsection requires that any request to extend a closing should be submitted in writing and identify a justifiable reason to move the closing date. Since the initial closing date is set by the board in this rule and because of the importance of closing loans to the effective operation of the program, this new subsection also requires that the board approve any extension to the closing date. It is the intent of the new subsection that the board will determine whether the basis to extend as identified by the applicant is reasonable in order for the extension to be approved.

There were no comments received on the proposed repeal and amendments.

SUBCHAPTER A. INTRODUCTORY PROVISIONS

31 TAC §371.4

The repeal is adopted under the authority of the Texas Water Code §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State including specifically the SRF program.

The statutory provision affected by the repeal is Texas Water Code, Chapter 15, Subchapter J.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 15, 2005.

TRD-200501162
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: April 4, 2005
Proposal publication date: February 4, 2005
For further information, please call: (512) 475-2052

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SUBCHAPTER B. PROGRAM REQUIREMENTS

31 TAC §§371.14, 371.22, 371.24

The amendments are adopted under the authority of the Texas Water Code §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State including specifically the SRF program.

The statutory provisions affected by the amendments are Texas Water Code, Chapter 15, Subchapter J.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 15, 2005.

TRD-200501163

Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: April 4, 2005
Proposal publication date: February 4, 2005
For further information, please call: (512) 475-2052

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SUBCHAPTER D. BOARD ACTION ON APPLICATION

31 TAC §371.51

The amendments are adopted under the authority of the Texas Water Code §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State including specifically the SRF program.

The statutory provisions affected by the amendments are Texas Water Code, Chapter 15, Subchapter J.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 15, 2005.

TRD-200501164
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: April 4, 2005
Proposal publication date: February 4, 2005
For further information, please call: (512) 475-2052

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 75, Air Conditioning and Refrigeration Contractor License Law. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

As required by Texas Government Code, §2001.039, any questions or written comments pertaining to this rule review may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, P. O. Box 12157, Austin, Texas 78711, facsimile-(512) 475-3032, or by e-mail, caroline.jackson@license.state.tx.us. The deadline for comments is thirty days after publication in the *Texas Register*.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

16 TAC §75.1. Authority

16 TAC §75.10. Definitions

16 TAC §75.20. Licensing Requirements--Application and Experience Requirements

16 TAC §75.21. Licensing Requirements--Examinations

16 TAC §75.22. Licensing Requirements--General

16 TAC §75.23. Licensing Requirements--Temporary Licenses

16 TAC §75.24. Licensing Requirements--Renewal

16 TAC §75.26. Certificate of Registration

16 TAC §75.30. Exemptions

16 TAC §75.40. Insurance Requirements

16 TAC §75.65. Advisory Board

16 TAC §75.70. Responsibilities of the Licensee and the Air Conditioning and Refrigeration Contracting Company

16 TAC §75.80. Fees

16 TAC §75.90. Sanctions--Administrative Sanctions/Penalties

16 TAC §75.100. Technical Requirements

TRD-200501224
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: March 21, 2005

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Adopted Rule Reviews

Department of Information Resources

Title 1, Part 10

In accordance with the requirement of Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years, and pursuant to the notice of intention to review published in the November 19, 2004, issue of the *Texas Register* (29 TexReg 10785), the Department of Information Resources has assessed whether the reason for adopting or readopting 1 TAC §201.19, concerning Quality Assurance Guidelines, continues to exist. No comments were received regarding the rule review.

As a result of the review, the Department of Information Resources has determined that the reason for adoption of 1 TAC §201.19 continues to exist. Therefore, the Department of Information Resources readopts 1 TAC §201.19.

TRD-200501236
Renée Mauzy
General Counsel
Department of Information Resources
Filed: March 22, 2005

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Texas Veterans Land Board

Title 40, Part 5

The Texas Veterans Land Board (VLB) files this Notice of Readoption of rule 40 TAC Chapter 175, relating to General Rules of the Veterans Land Board, §§175.1 - 175.23, 175.51 - 175.62. This readoption of Chapter 175 is filed in accordance with the Veteran Land Board's

Intention to Review published in the December 24, 2004 issue of the *Texas Register* (29 TexReg 11990).

The VLB has assessed whether the reasons for readopting 40 TAC Chapter 175, §§175.1 - 175.23, 175.51 - 175.62 continue to exist. The VLB finds that the rules in Chapter 175 reflect current VLB procedures. The reasons for initially adopting the rules continue to exist. The VLB, therefore, readopts Chapter 175 in its entirety, relating to General Rules of the Veterans Land Board.

No comments were received on the proposed notice of intention to review.

The readoption of Chapter 175 is proposed under the Natural Resources Code, §161.063, which authorizes the VLB to adopt rules concerning the operation of the program.

This concludes the review of Chapter 175, General Rules of the Veterans Land Board.

TRD-200501221
Trace Finley
Policy Director
Texas Veterans Land Board
Filed: March 21, 2005

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The Texas Veterans Land Board (VLB) files this Notice of Readoption of rule 40 TAC Chapter 177, relating to Veterans Housing Assistance Program, §§177.1 - 177.14. This readoption of Chapter 177 is filed in accordance with the Veteran Land Board's Intention to Review published in the December 24, 2004 issue of the *Texas Register* (29 TexReg 11990).

The VLB has assessed whether the reasons for readopting 40 TAC Chapter 177, §§177.1 - 177.14 continue to exist. The VLB finds that the rules in Chapter 177 reflect current VLB procedures. The reasons for initially adopting the rules continue to exist. The VLB, therefore, readopts Chapter 177 in its entirety, relating to Veterans Housing Assistance Program.

No comments were received on the proposed notice of intention to review.

The readoption of Chapter 177 is proposed under the Natural Resources Code, §162.003(b), which authorizes the VLB to adopt rules concerning the operation of the program.

This concludes the review of Chapter 177, Veterans Housing Assistance Program.

TRD-200501222
Trace Finley
Policy Director
Texas Veterans Land Board
Filed: March 21, 2005

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 31 TAC §69.8(a)

Cacti:	
star cactus	*Astrophytum asterias*
Nellie cory cactus	*Escobaria minima*
Sneed pincushion cactus	*Escobaria sneedii* var. *sneedii*
black lace cactus	*Echinocereus reichenbachii* var. *albertii*
Davis' green pitaya	*Echinocereus viridiflorus* var. *davisii*
Pima pineapple cactus	*Coryphantha scheeri* var. *robustispina*
Tobusch fishhook cactus	*Sclerocactus brevihamatus* ssp. *tobuschii*
Trees, Shrubs, and Subshrubs:	
Johnston's frankenia	*Frankenia johnstonii*
Walker's manioc	*Manihot walkerae*
Texas snowbells	*Styrax platanifolius* ssp. *texanus*
Wildlfowers:	
large-fruited sand verbena	*Abronia macrocarpa*
South Texas ambrosia	*Ambrosia cheiranthifolia*
Texas ayenia	*Ayenia limitaris*
Texas poppy mallow	*Callirhoe scabriuscula*
Terlingua Creek cat's-eye	*Cryptantha crassipes*
slender rush-pea	*Hoffmannseggia tenella*
Texas prairie dawn	*Hymenoxys texana*
white bladderpod	*Lesquerella pallida*
Texas trailing phlox	*Phlox nivalis ssp. texensis*
ashy dogweed	*Thymophylla tephroleuca*
Zapata bladderpod	*Lesquerella thamnophila*
Orchids:	
Navasota ladies'-tresses	*Spiranthes parksii*
Grasses and Grass-like Plants:	
Little Aguja pondweed	*Potamogeton clystocarpus*
Texas wild-rice	*Zizania texana*

Figure: 31 TAC §69.8(b)

Cacti:	
Bunched cory cactus	*Coryphantha ramillosa* ssp. *ramillosa*
Chisos Mountains hedgehog cactus	*Echinocereus chisoensis* var. *chisoensis*
Lloyd's mariposa cactus	*Sclerocactus mariposensis*
Trees, Shrubs, and Subshrubs:	
Hinckley's oak	*Quercus hinckleyi*
Wildflowers:	
Pecos Sunflower	*Helianthus paradoxus*
Tinytim	*Geocarpon minimum*

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Public Hearing Notice

In accordance with the Texas Agriculture Code, §74.113, the Texas Department of Agriculture (the department) will hold two public hearings to take public comment on a proposed upcoming referendum proposition seeking to extend the time for payment of the maximum annual assessment approved by cotton growers for the El Paso/Trans-Pecos Boll Weevil Eradication Zone. The hearings will be held as follows:

on April 6, 2005, beginning at 3:30 p.m., at the Reeves County Civic Center, State Highway 285, Pecos, Texas 79772; and

on April 7, 2005, beginning at 9:30 a.m., at the Texas A&M Research Center, 1380 A&M Circle, El Paso Texas 79927.

For more information, please contact Ryan O'Neal, Producer Relations Specialist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 78711 (512)463-7593.

TRD-200501269
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: March 23, 2005

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Office of the Attorney General

Texas Clean Air Act, the Texas Water Code, and Texas Solid Waste Disposal Act Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *State of Texas v. Dudley F. Mooney and Thombean, Inc., No. GV500646 in the 250th District Court of Travis County, Texas*.

Nature of Defendant's Operations: Defendants own or previously owned property in Palo Pinto County that was the site of a rock quarry.

Proposed Agreed Judgment: The judgment contains an injunction that prohibits quarry and stone removal operations at the subject site, prohibits pollution of the Brazos River, and requires the defendants to continue to retain an environmental engineering firm to conduct inspections of the pollution control structures and systems at the site, and submit reports to the Texas Commission on Environmental Quality and Office of the Attorney General. The judgment also requires the defendants to pay $30,000 in attorney's fees and all courts costs to the State.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to David Preister, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication you may contact A.G. Younger, Agency Liaison, at (512) 463-2110.

TRD-200501231
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: March 21, 2005

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Texas Building and Procurement Commission

Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Department of Public Safety, announces the issuance of **Revised Request for Proposals (RFP) 303-5-10648-A**. TBPC seeks a five year lease of approximately 4,568 sq. ft. of office space in the Lake Worth area, Tarrant County, Texas. The boundaries of the RFP have been expanded to include the area east of the Tarrant County Line, west of I-35W, south of County Road 4042, and north of I-20, including Lake Worth to White Settlement.

The deadline for questions is April 8, 2005 and the deadline for proposals is April 15, 2005 at 3:00 P.M. The award date is May 15, 2005. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the revised RFP may be downloaded from the Electronic State Business Daily at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=58118.

TRD-200501233
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: March 21, 2005

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp.

1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of March 11, 2005, through March 17, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on March 23, 2005. The public comment period for these projects will close at 5:00 p.m. on April 22, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Chuck Gautier; Location: The project is located along Crash Boat Basin, at 1534, 1530, and 1526 103rd Street, in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Virginia Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 317683; Northing: 3238730. Project Description: The applicant proposes to mechanically dredge an existing slough for boat access, construct 3 boathouses, place riprap or bulkhead for shoreline stabilization and mitigate for impacts to 560 square feet of Spartina alterniflora from the dredging and boathouse construction. The applicant also requests authorization for 10-year maintenance dredging of the slough. After dredging, the existing slough will average 30 feet in width with a depth of 5-feet at mean high tide (MHT). Currently the depth of the slough averages 1 to 3-feet MHT. Approximately 800 to 1,200 cubic yards of dredge material will be placed on the applicant's existing upland property. The first boathouse at 1534 103rd Street will have a 30-foot-wide by 32-foot-long boathouse and walkway. The second boathouse at 1530 103rd Street will have a 20-foot-wide by 40-foot-long walkway and boathouse. The third boathouse at 1526 103rd Street will have a 20-foot-wide by 32-foot-long walkway and boathouse. Approximately 230 cubic yards of concrete riprap will be placed along the shoreline or a bulkhead will be placed above the high tide line and above any existing wetland vegetation for bank stabilization. To mitigate for wetland impacts the applicant proposes to create approximately 1,218 square feet of new wetlands with Spartina alterniflora from existing uplands on the project site. CCC Project No.: 05-0191-F1; Type of Application: U.S.A.C.E. permit application #23669 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Golden Pass LNG Terminal LP and Golden Pass Pipeline LP; Location: The project terminal is located adjacent to State Highway 87, northwest of the town of Sabine Pass, adjacent to the Port Arthur Canal, Jefferson County, Texas. The liquefied natural gas (LNG) terminal facility can be located on the U.S.G.S. quadrangle map entitled: Port Arthur South, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 410606; Northing: 3293000. The proposed pipeline begins at the terminal and will be constructed through the J. D. Murphree Wildlife Management Area (WMA). Once through the WMA, the pipeline will be constructed in a northeasterly direction through Jefferson, Orange, and Newton Counties, Texas, then cross into Calcasieu Parish, Louisiana. The pipeline will end north of Highway 12 at an existing pipeline interconnect site (TRANSCO). The end of the pipeline can be located on the U.S.G.S. quadrangle map entitled: Lunita, Louisiana. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 441901; Northing: 3358443. Project Description: The applicant proposes to construct, operate, and maintain structures and equipment necessary for an LNG receiving and transportation facility. The project is designed for the importation, storage, and delivery of foreign-source LNG to natural gas markets. Large LNG ships will offload LNG at a new marine terminal to be constructed adjacent to the Port Arthur Canal. The terminal will have the capability of unloading up to 200 ships per year. LNG will be transferred from the ships into cryogenic service storage tanks where it will be stored in a liquefied state at atmospheric pressure. To condition the LNG for the intrastate pipeline market, shell-and-tube heat exchangers will vaporize the LNG. Natural gas will be sent out of the terminal facilities at an average rate of 2.0 billion cubic feet per day (Bcf/d) via the natural gas sendout pipeline. The sendout pipeline will transport the natural gas to metering stations and interconnection facilities with up to 11 existing intrastate and interstate pipelines. The entire project will be constructed in two phases over an approximate 48-month period. The project will consist of three (3) primary components: Marine terminal and LNG transfer lines, LNG storage and vaporization facility, and Natural gas sendout pipeline, metering stations, and associated appurtenances. The terminal facility would be located on approximately 205 acres (site) of a 477-acre property that Golden Pass has purchased on the western shore of the Port Arthur Canal, approximately 10 miles south of the city center of Port Arthur, Texas, and 2 miles northeast of Sabine Pass, Texas. In the past, the site was used as a dredge material placement area (DMPA) for materials dredged during maintenance of the Sabine-Neches Waterway (SNWW). The marine slip would consist of two protected LNG ship berths, each equipped with mooring systems and associated LNG unloading facilities, a maneuvering area to turn and move the LNG ships into the berths, as well as berthing facilities for the three tugboats used to maneuver the LNG ship into the berth. The new marine slip would be located outside of the Port Arthur Canal and separate from ship traffic in the channel. The marine terminal would be capable of unloading up to 200 ships per year or about 1 ship every 2 days, and would be designed to accommodate LNG ships with storage capacities between 125,000 cubic meters and 250,000 cubic meters of LNG per ship with drafts of 39 feet. Although both berths could be used for simultaneous berthing of a ship, only one ship would be unloaded at a time. The marine slip and maneuvering area would be approximately 1,300 feet by 1,300 feet and would be dredged to a minimum depth of -40 feet below mean lower low water (MLLW) plus 2 feet of over dredge and 2 feet of advanced maintenance, for a maximum depth of -44 feet MLLW. Construction of the marine slip and maneuvering area would require the dredging of a total of approximately 6.3 million cubic yards of material, consisting of 3.9 million cubic yards of land for the berths and turning area, and 2.4 million cubic yards of shallow water between the berth and the Port Arthur Canal. All dredging would be completed at one time during Phase 1. Maintenance dredging is estimated to be approximately 410,000 cubic yards per year, and would be performed every two years (820,000 cubic yards) or as needed. The applicant is also requesting a 10-year maintenance dredging permit. Golden Pass LNG proposes to remove the dredge material with a hydraulic dredge and deliver this material via pipeline to Placement Areas 8 and 9. A portion of the dredged material, approximately 1.3 million cubic yards, will be placed for beneficial use in the J. D. Murphree WMA as part of a wetland restoration area in an existing shallow open water location. The berth facilities would be constructed separately beginning with Berth 1 during Phase 1 and then proceeding westward to Berth 2 during Phase 2. Each berth would be approximately 1,300 feet long, designed for both port and starboard mooring with ships in each berth. Each berth would include a single level unloading platform consisting of a reinforced concrete deck and beams supported on piles. The unloading platform would be curbed to confine LNG spillage and its surface sloped to a collection point. Drainage from the collection point would flow to an onshore spill impoundment by means of piping

collection troughs. Each berth would consist of four 16-inch-diameter LNG unloading arms and one 16-inch vapor return arm, plus associated valves and piping, a gangway tower, firewater monitors, an anemometer, and firewater monitor pumps. Each unloading arm would be sized for an average transfer rate of 15,410 gallons per minute. The vapor return arm would be used to return tank vapors displaced during the unloading operation back to the ship to maintain a positive ship tank pressure. The vapor return arm would be sized for 494,400 cubic feet per hour. One of the four unloading arms would be a hybrid arm suitable for either liquid or vapor service. This hybrid arm would be available for vapor service in the event the dedicated vapor arm is unavailable. LNG would be transferred from ships to the onshore LNG storage tanks using the ship's cargo pumps and berth unloading arms. LNG transfer to the LNG storage tanks would occur through 30-inch-diameter, single-wall, 304 stainless steel transfer lines that are externally insulated with foam glass insulation. Two 30-inch-diameter lines would be provided at each berth and would be manifolded into two 30-inch-diameter lines prior to entering the LNG tank area. The LNG would be stored in insulated, full-containment tanks each sized to store a working capacity of 155,000 cubic meters (975,000 barrels) of LNG at a temperature of minus 256 degrees Fahrenheit and a normal operating pressure of 1 to 3 pounds per square inch gauge (psig). Three tanks would be constructed during Phase 1 and two tanks during Phase 2. The outside diameter of the outer tank would be approximately 252 feet and the height to the top of the dome would be approximately 173 feet above grade. LNG from the storage tank would be vaporized and pressurized for send-out to the natural gas pipeline system. The LNG would be vaporized by heat exchange using a closed-loop circulating solution of an intermediate heat transfer fluid (HTF) in shell-and-tube heat exchangers. The heat requirement for LNG vaporization would be accomplished by sending a portion of the HTF through gas-fired heaters. The HTF would be a 40 percent by weight propylene glycol-in-water solution. The heat source for LNG vaporization would be natural gas. Golden Pass also proposes to construct a natural gas pipeline system consisting of approximately 122.4 miles of natural gas pipeline in Jefferson, Orange, and Newton Counties, Texas, and Calcasieu Parish, Louisiana, consisting of the: Mainline - Approximately 77.8 miles of 36-inch-diameter pipeline extending from the LNG terminal near Sabine Pass, Texas, generally west, north, and then northeast to an interconnection with an existing Transco interstate pipeline near Starks, Louisiana; Loop - Approximately 42.8 miles of 36-inch-diameter looping pipeline that would be installed adjacent to the Mainline between mileposts (MP) 0.0 and 42.8, from the LNG terminal near Sabine Pass, Texas, to an interconnection with the AEP Texoma pipeline near Beaumont, Texas; Beaumont Lateral - Approximately 1.8 miles of 24-inch-diameter lateral pipeline extending from the Mainline and Loop at MP 38.2, near Beaumont, Texas, to industrial customers including the ExxonMobil Beaumont Refinery complex; and Associated pipeline facilities (pig launchers/receivers, block valves) and metering facilities at interconnections with up to 11 existing intrastate and interstate pipelines. Impacts To Jurisdictional Wetlands And Waters: The LNG terminal will impact approximately 114 acres of wetlands. The breakdown of impacts to wetlands is as follows: 46.08 acres of coastal emergent marsh will be permanently impacted by fill material for the construction of the LNG facility; 67.56 acres of palustrine emergent marsh within the project area will be filled or excavated during the terminal and marine slip construction; and 0.38 acre of palustrine scrub-shrub wetland will be filled within the LNG facility. The LNG terminal marine slip will impact 42.8 acres of existing open water areas and create 63.9 acres of new open water area. The applicant will reclaim approximately 2 acres of eroded shoreline by filling the shallow water area adjacent to the channel. The LNG sendout mainline, loop, and Beaumont lateral will temporarily impact approximately 225.96 acres of wetlands and permanently impact 64.24 acres. There will be 0.366 acre of permanent impacts to palustrine emergent wetlands due to access roads. There will be 63.87 acres of permanent impacts to forested wetlands for the creation of pipeline right-of-way and workspace for pipeline construction. The breakdown of impacts to forested wetlands due to pipeline construction is as follows: 4.94 acres of bottomland hardwood wetlands; 41.74 acres of mixed pine-hardwood wetlands; 15.35 acres of pine flatwoods wetlands; and 1.83 acres of bald cypress swamp. LNG Terminal Mitigation: The applicant proposes to mitigate for the permanent palustrine and estuarine marsh impacts at the terminal site by filling a 244-acre open water area in the J. D. Murphree WMA. The applicant proposes to use 1.3 million cubic yards of the dredged material from the creation of the marine slip at the terminal location. This will create a 244-acre vegetated marsh within an existing marsh complex managed by the Texas Parks and Wildlife Department. Pipeline Mitigation: The applicant proposes to restore the pipeline corridor to pre-construction elevations and allow the area to naturally revegetate. Preserving a tract of land adjacent to existing nature preserves located in southeast Texas will mitigate for the permanently impacted 64.24 acres of wetlands along the pipeline corridor. The tract of land will be delineated and must contain a minimum of 300 acres of forested wetlands. CCC Project No.: 05-0192-F1; Type of Application: U.S.A.C.E. permit application #23620 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200501235
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: March 22, 2005

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Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective April 1, 2005

An additional 1/4% city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2005 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Annetta North (Parker Co)	2184124	.017500	.080000
Selma (Bexar Co)	2015174	.017500	.080000
Selma (Comal Co)	2015174	.017500	.080000
Selma (Guadalupe Co)	2015174	.017500	.080000
Yorktown (DeWitt Co)	2062014	.015000	.077500

An additional 1/2% city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective April 1, 2005 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Highland Village (Denton Co)	2061220	.020000	.082500
South Houston (Harris Co)	2101188	.020000	.082500
Sullivan City (Hidalgo Co)	2108216	.015000	.077500

An additional 1/2% city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** plus an additional 1/4% sales and use tax for Municipal Street Maintenance and Repair as permitted under Section 327 of the Texas Tax Code will become effective April 1, 2005 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Krum (Denton Co)	2061140	.017500	.080000
Nevada (Collin Co)	2043250	.017500	.080000

The additional 1/2% sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will be reduced to 1/4% and the adoption of an additional 1/4% sales and use tax for Municipal Street Maintenance and Repair as permitted under Section 327 of the Texas Tax Code will become effective April 1, 2005 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Hill Country Village (Bexar Co)	2015085	.020000	.082500

An additional 1/2% sales and use tax for Sports and Community Venue will become effective April 1, 2005 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Arlington (Tarrant Co)	2220095	.017500	.080000

The 1/2% San Antonio MTA tax has been repealed and will be abolished effective March 31, 2005 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Selma (Bexar Co)	2015174	.017500	.080000
Selma (Comal Co)	2015174	.017500	.080000
Selma (Guadalupe Co)	2015174	.017500	.080000

A 1/4% advanced transportation district sales and use tax will become effective April 1, 2005 in the advanced transportation district listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
San Antonio Advanced Transportation District	3015664	.002500	SEE NOTE 1

A 1/2% special purpose district sales and use tax will become effective April 1, 2005 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Overton Municipal Development District	5201506	.005000	SEE NOTE 2
Palmhurst Crime Control and Prevention District	5108500	.005000	SEE NOTE 3

NOTE 1: The boundaries of the San Antonio Advanced Transportation District are the same boundaries as the City of San Antonio. The City of San Antonio currently imposes a 1% city sales tax and the San Antonio Metropolitan Transit Authority imposes a 1/2% sales tax in the city.

NOTE 2: The boundaries of the Overton Municipal Development District are the portion of the City of Overton located in Rusk County. The district does not include any area of the City of Overton within Smith County. The total rate in the City of Overton will be 8 1/4%. Contact the City of Overton at 903/834-3171 for additional boundary information.

NOTE 3: The boundaries of the Palmhurst Crime Control and Prevention District are the same as the City of Palmhurst. The total rate in the City of Palmhurst will be 8 1/4%.

TRD-200501197
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: March 17, 2005

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in 303.003, 303.009, and 304.003, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 03/28/05 - 04/03/05 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 03/28/05 - 04/03/05 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 04/01/05 - 04/30/05 is 5.50% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 04/01/05 - 04/301/05 is 5.50% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-200501239
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 22, 2005

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Texas Education Agency

Request for eGrant Applications concerning Even Start Family Literacy Program, 2005-2006

Eligible Applicants. The Texas Education Agency (TEA) is requesting eGrant applications under Request for Applications (RFA) #701-05-004 from partnerships composed of a public school district or an open-enrollment charter school and a nonprofit community-based organization, a public agency, an institution of higher education, or a public or private nonprofit organization, other than a local education agency, of demonstrated quality.

Description. The purpose of the Even Start Family Literacy Program is to help parents become full partners in their children's education; to help children reach their full potential as learners; to provide literacy training for parents; to assist families with parenting strategies in child growth and development and the educational process for children from birth through age 7; and to coordinate efforts that build on existing community resources.

Dates of Project. The Even Start Family Literacy Program will be implemented during the 2005-2006 school year. Applicants should plan for a starting date of no earlier than September 1, 2005, and an ending date of no later than August 31, 2006, if selected for funding.

Project Amount. Funding will be provided for approximately 25 projects. Applicants may apply for not less than $75,000 and not more than $200,000 for the 2005-2006 school year. During the first four-year cycle, applicants are required to provide a minimum 10% cost share in the first year, 20% in the second year, 30% in the third year, and 40% in the fourth year. Applicants who apply for and receive funding for the second, third, and fourth four-year cycles will be required to provide 50% cost share during the second cycle and 65% throughout the third and fourth cycles.

Continuation funding will be based on satisfactory progress of the first-year objectives and activities and on general budget approval by the commissioner of education and the U.S. Congress. This project is funded 90%, or $5,150,000, from federal funds and 10%, or $572,222, from nonfederal sources.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. The Even Start Family Literacy Program includes required program elements outlined in P.L. 107-110, §1235. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Obtaining Access to TEA's eGrants. The Even Start Family Literacy Program is available only through TEA's eGrants and may not be obtained or submitted by any other means. The eGrant application will be available on eGrants beginning April 1, 2005. To apply for access to eGrants, go to the TEA website at http://www.tea.state.tx.us/opge/egrant/index.html. Under the "eGrants Toolbox," select "Apply for eGrants Logon." Complete the form as instructed, obtain the required signatures, and send it to the TEA contact listed on the form.

Applicant's Conference Available on the Texas Education Telecommunication Network (TETN). An Applicant's Conference will be held April 8, 2005, from 1:00 p.m. until 4:00 p.m. via TETN (TETN Event #10782). The conference will be open to all prospective applicants and will provide an opportunity to receive general and clarifying information about the program and RFA. Each person attending will be required to sign a register and provide the representative's name, the applicant organization represented, its name, address, and telephone number. During the presentation, questions regarding the RFA will be addressed. The RFA may be downloaded from the TEA's website at http://www.tea.state.tx.us/opge/disc/index.html, and questions may be emailed to carlos.garza@tea.state.tx.us or faxed to (512) 463-9811 prior to April 6, 2005. Individuals planning to attend the event should register for attendance by contacting the TETN site manager at their regional education service center.

The entire Applicant's Conference will be videotaped. Prospective applicants who are not able to attend the Applicant's Conference may request a copy of the videotape at no charge from the Division of Discretionary Grants, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701. The presentation will also be available for downloading from the TEA's website at http://www.tea.state.tx.us/opge/disc/other.html.

Further Information. For clarifying information about the eGrant RFA, contact Elizabeth Thompson, Texas LEARNS, Harris County Department of Education, (713) 696-0700.

Deadline for Receipt of eGrant Applications. Applications must be received by the Texas Education Agency by 5:00 p.m. (Central Time), Thursday, May 26, 2005, to be considered for funding.

TRD-200501264
Cristina De La Fuente-Valadez
Director, Policy Coordination Division
Texas Education Agency
Filed: March 23, 2005

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Education Service Center, Region X

Request for Proposals

The Education Service Center Region 10 is soliciting proposals for a Distance Learning Speech-Language Pathology Master's Degree Program, using IDEA-B federal funds authorized by the Texas Education Agency for this specific project. This project seeks to fund a distance learning master's degree program that will increase the pool of highly qualified, ASHA certified, speech-language pathology professionals statewide, while allowing students to complete internship requirements during the workday. This project will be a coordinated effort between Region 10 Education Service Center, the university awarded this grant, and the Texas Education Agency.

Vendors wishing to receive a complete copy of the Request for Proposal should write or call Sue Hayes, Chief Financial Officer, Education Service Center Region 10, 400 E. Spring Valley Road, Richardson, Texas 75083-1300, (972) 348-1112. Please refer to RFP #2005-06 in your request.

All proposals must be received at the above address by 4:00 P.M. Thursday, May 12, 2005.

The award winning vendor will be selected based on their qualifications and ability to carry out all requirements contained in the RFP. The Region 10 ESC reserves the right to select the vendor that represents the best value to the Center.

TRD-200501232
Kathleen Boswell
Executive Assistant
Education Service Center, Region X
Filed: March 21, 2005

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Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding Electro-Coatings of Texas, Inc., Docket No. 2001- 0588-IHW-E on 03/11/2005 assessing $71,340 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deborah Bynum, Attorney at 512/239-1976, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chouhan Enterprise Corporation dba Gina's Food Mart 2, Docket No. 2002-0820-PST-E on 03/11/2005 assessing $8,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Attorney at 713/422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Hermilio Gracia and Alma Gracia, Docket No. 2003- 0493-MSW-E on 03/11/2005 assessing $7,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lindsay Andrus, Attorney at 512/239-4761, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ivan Allen dba Keene Sanitation, Docket No. 2003- 0299-MSW-E on 03/11/2005 assessing $7,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ashley Kever, Attorney at 512/239-2987, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Barker Business, Inc. dba Speedy Mart, Docket No. 2003-1030-PST-E on 03/11/2005 assessing $6,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Attorney at 512/239-5111, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding T J Shaikh, Inc. dba Shop N Go Food Mart, Docket No. 2003-1554-PST-E on 03/11/2005 assessing $4,140 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Attorney at 713/422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sahers, Inc. dba Save A Step Mart 5, Docket No. 2003-0847-PST-E on 03/11/2005 assessing $2,460 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Biggins, Attorney at 210/403-4017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Spring Independent School District dba Spring ISD Transportation Center, Docket No. 2003-1577-MLM-E on 03/11/2005 assessing $25,080 in administrative penalties with $5,016 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at 713/767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WEB/VDJ, Inc., Docket No. 2003-1422-MWD-E on 03/11/2005 assessing $6,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ronnie Kramer, Enforcement Coordinator at 806/468-0512, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Houston Business Investments, Inc., Docket No. 2003-0886-PST-E on 03/11/2005 assessing $3,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Wendy Cooper, Attorney at 817/588-5867, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Husam Jallad dba Country Boy Store 1, Docket No. 2003-0896-PST-E on 03/11/2005 assessing $2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gitanjali Yadav, Attorney at 512/239-2029, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Clyde Clardy dba Bastrop West Water Supply, Docket No. 2003-1283-PWS-E on 03/11/2005 assessing $260 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at 512/239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Devon Gas Services, L.P., Docket No. 2003-1303- AIR-E on 03/11/2005 assessing $1,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gitanjali Yadav, Attorney at 512/239-2029, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Atofina Petrochemicals, Inc., Docket No. 2003-1135- AIR-E on 03/11/2005 assessing $15,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Reed, Enforcement Coordinator at 432/620-6132, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Rabnawaz Sattar dba Stop N Get, Docket No. 2003- 1157-PST-E on 03/11/2005 assessing $14,490 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Okpohworho, Attorney at 713/422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Arp, Docket No. 2003-1346-MWD-E on 03/11/2005 assessing $4,480 in administrative penalties with $896 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari Bing, Enforcement Coordinator at 512/239-1445, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding East Texas Petroleum Company, Inc., Docket No. 2004-0232-PST-E on 03/21/2005 assessing $1,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Reed, Enforcement Coordinator at 432/620-6132, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Abilene, Docket No. 2004-0246-PST-E on 03/11/2005 assessing $10,500 in administrative penalties with $2,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Lori Thompson, Enforcement Coordinator at 903/535-5116, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Thrall, Docket No. 2004-0263-MLM-E on 03/11/2005 assessing $3,268 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at 512/239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Big Lake, Docket No. 2004-0311-MWD-E on 03/11/2005 assessing $7,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at 512/239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sunoco, Inc. (R&M), Docket No. 2004-0351-AIR-E on 03/11/2005 assessing $26,790 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator at 512/239-2680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cotulla, Docket No. 2004-0372-PWS-E on 03/11/2005 assessing $910 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brandon Smith, Enforcement Coordinator at 512/239-4471, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Moorpark Village, Inc. dba Moorpark Village Water System, Docket No. 2004-0419-PWS-E on 03/11/2005 assessing $700 in administrative penalties with $140 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at 713/422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oak Bend Property Owners Association dba Oak Bend Homeowners Water Supply, Docket No. 2004-0448-PWS-E on 03/11/2005 assessing $400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barbara Klein, Attorney at 512/239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Beaumont Town & Country Plaza, Docket No. 2004- 0527-PST-E on 03/11/2005 assessing $8,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barbara Klein, Attorney at 512/239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Owens Corning, Docket No. 2004-0561-AIR-E on 03/11/2005 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at 512/239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Whitestone Retail, Ltd. dba Shops at Whitestone, Docket No. 2004-0562-EAQ-E on 03/11/2005 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari Bing, Enforcement Coordinator at 512/239-1445, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EOG Resources, Inc., Docket No. 2004-0613-AIR-E on 03/11/2005 assessing $2,700 in administrative penalties with $540 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at 512/239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kitson & Partners, LLC dba Chase Oaks Golf Club, Docket No. 2004-0651-PST-E on 03/11/2005 assessing $4,050 in administrative penalties with $810 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari Bing, Enforcement Coordinator at 512/239-1445, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas A&M University, Docket No. 2004-0656- MWD-E on 03/11/2005 assessing $15,550 in administrative penalties with $3,110 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at 512/239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Buda, Docket No. 2004-0742-PWS-E on 03/11/2005 assessing $1,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator at 512/239-3308, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding West Texas Superquick, Inc., Docket No. 2004-0762- PST-E on 03/11/2005 assessing $10,910 in administrative penalties with $2,182 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at 512/239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Throckmorton, Docket No. 2004-0797-PWS- E on 03/11/2005 assessing $250 in administrative penalties with $50 deferred.

Information concerning any aspect of this order may be obtained by contacting Chad Blevins, Enforcement Coordinator at 512/239-6017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kippur Corporation, Docket No. 2004-0799-AIR-E on 03/11/2005 assessing $4,620 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at 512/239-7037, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jupe Mills, Inc., Docket No. 2004-0877-AIR-E on 03/11/2005 assessing $3,060 in administrative penalties with $612 deferred.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at 512/239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Motiva Enterprises, LLC, Docket No. 2004-0898- AIR-E on 03/11/2005 assessing $20,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at 512/239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tyson Foods, Inc. dba Tyson Fresh Meats, Docket No. 2004-0905-AIR-E on 03/11/2005 assessing $6,200 in administrative penalties with $1,240 deferred.

Information concerning any aspect of this order may be obtained by contacting Ronnie Kramer, Enforcement Coordinator at 806/468-0512, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Red River Redevelopment Authority, Docket No. 2004-0968-PWS-E on 03/11/2005 assessing $313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator at 512/239-2680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Stanton, Docket No. 2004-1031-PWS-E on 03/11/2005 assessing $390 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at 817/588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John S. Bewley dba Town and Country Food Mart, Docket No. 2004-1099-PST-E on 03/11/2005 assessing $2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator at 512/239-0667, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Morgan Oil Company, Docket No. 2004-1164-PST-E on 03/11/2005 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at 409/899-8781, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LBC Houston, L.P., Docket No. 2004-1192-AIR-E on 03/11/2005 assessing $3,950 in administrative penalties with $790 deferred.

Information concerning any aspect of this order may be obtained by contacting Ronnie Kramer, Enforcement Coordinator at 806/468-0512, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gas Recovery Systems, L.L.C., Docket No. 2004- 1217-AIR-E on 03/11/2005 assessing $1,625 in administrative penalties with $325 deferred.

Information concerning any aspect of this order may be obtained by contacting Lori Thompson, Enforcement Coordinator at 903/535-5116, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Circle K Stores, Inc., Docket No. 2004-1239-PST-E on 03/11/2005 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Mauricio Olaya, Enforcement Coordinator at 915/834-4967, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Degussa Engineered Carbons, L.P., Docket No. 2004- 1256-AIR-E on 03/11/2005 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at 512/239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Nocona, Docket No. 2004-1266-PWS-E on 03/11/2005 assessing $675 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at 512/239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Devon Energy Operating Company, L.P., Docket No. 2004-1562-AIR-E on 03/11/2005 assessing $750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gitanjali Yadav, Attorney at 512/239-2029, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200501263
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 23, 2005

♦ ♦ ♦

Notice of District Petition

Notices mailed March 22, 2005

TCEQ Internal Control No. 02282005-D01; Tivoli Development, L.P. (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 407 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are two lienholders, Hibernia Bank and PKB PrivatBank AG, on the property to be included in the proposed District; (3) the proposed District will contain approximately 54.1867 acres located within Harris County, Texas; and (4) the proposed District is within the corporate limits of the City of Houston, Texas, and is not within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. The Petitioner has provided the TCEQ with certificates evidencing the consent of Hibernia Bank and PKB PrivatBank AG to the creation of the proposed District. By Ordinance No. 2005-57, effective January 25, 2005, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain, and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of water, as more particularly described in an engineer's report filed simultaneously with the filing of the petition; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, enterprises, parks and recreational facilities consistent with the purposes for which the District is created and permitted under State law. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $7,250,000.

TCEQ Internal Control No. 02252004-D02; Hays Reunion Ranch, LP (Petitioner) filed a petition for Reunion Ranch Water Control and Improvement District of Hays County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are two lienholders, Bank of America and Regions Bank, on the property to be included in the proposed District; (3) the proposed District will contain approximately 490.92 acres located within Hays County, Texas; and (4) the proposed District is not within the corporate limits or extraterritorial jurisdiction of any city, town or village in Texas. The Petitioner has provided the TCEQ with certificates evidencing the consent of Bank of America and Regions Bank to the creation of the proposed District. The petition further states that the proposed District will acquire and construct a waterworks and sanitary sewer system; recreational and park or flood control facilities; provide more adequate drainage for the property in the proposed District; services and any additional facilities, systems, plants and enterprises consistent with the purposes for which the District is created. According to the petition, the Petitioners estimate that the cost of the project will be approximately $11,130,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200501260
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 23, 2005

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Notice of Meeting on May 12, 2005, in Brady, Texas Concerning the Bailey Metal Processors, Inc. Facility

The purpose of the meeting is to obtain public input and information concerning proposal of the facility to the state registry of Superfund sites, the identification of potentially responsible parties, and the proposal of non-residential land use.

The Texas Commission on Environmental Quality (TCEQ) is required under the Texas Solid Waste Disposal Act, Health and Safety Code, Chapter 361, as amended (Act), to annually publish a state registry that identifies facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The most recent registry listing of these facilities was published in the March 26, 2004 issue of the *Texas Register* (29 TexReg 3278).

In accordance with the Act, §361.184(a), the TCEQ must publish a notice of intent to list a facility on the state registry of state Superfund sites in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located. With this publication the TCEQ hereby gives notice that the TCEQ has determined that Bailey Metal Processors, Inc. (Bailey Metals) is eligible for listing, and the TCEQ proposes to list Bailey Metals on the state registry. Additionally, the TCEQ gives notice in accordance with the Act, §361.1855, that it proposes a land use other than residential as appropriate for the facility identified in this notice. The TCEQ is proposing a commercial/industrial land use designation. Determination of appropriate land use may impact the remedial investigation and remedial action for the site. The TCEQ is proposing a land use designation of commercial/industrial based on the existing land use of the property, as is prescribed in the Texas Risk Reduction Program (30 TAC §350.53).

This publication also specifies the general nature of the potential endangerment to public health and safety or the environment as determined by information currently available to the TCEQ. This notice of intent to list this facility will also be published on April 5, 2005 in the *Brady Standard-Herald*.

The facility proposed for listing is Bailey Metals located in Brady, McCulloch County, Texas. The geographic coordinates of the site are Latitude: 31 degrees 08 minutes 21.15 seconds North Longitude: 99 degrees 20 minutes 51.75 seconds West. The description of the site is based on information available at the time the site was evaluated with the Hazard Ranking System (HRS). The HRS is the principal screening guide used by the commission to evaluate potential, relative risk to public health and the environment from releases or threatened releases of hazardous substances. The site description may change as additional information is gathered on the sources and extent of contamination.

Section 361.184(a) requires that the notice specify the general nature of the potential endangerment to public health and safety or the environment as determined by information available to the executive director at that time.

The Bailey Metal Site (the Site) is a five acre site located on Highway 87, one mile northwest of Brady, Texas. The Site was operated as a scrap metal dealer, primarily conducting copper and lead reclamation operations. Paper, plastic and lead coatings were removed from wires to reclaim the metals.

Two furnaces at the Site were used to burn plastic wire insulation. There are documented releases of ash and metallic residues to the soil. Analytical results for soil samples collected from around the furnaces indicate the soil contains elevated levels of lead at 67,400 parts per million (ppm), 74,900 ppm, and 122,000 ppm with a leachable concentration of 517 ppm. In addition, plastic chips (wire cutting wastes) and incinerator ash are stockpiled onsite.

The land use in the vicinity of the Site includes residential, agricultural and municipal. The Site is bordered to the south by a railroad, bordered to the north by the Brady Independent School District Bus Barn and two mobile homes. Access to the Site is unrestricted.

A public meeting will be held May 12, 2005, at 7:00 p.m. at the Council Chambers of Brady City Hall, located at 101 East Main Street in Brady, Texas. The purpose of this meeting is to obtain additional information regarding the Site relative to its eligibility for listing on the state registry, identify additional potentially responsible parties, and obtain public input and information regarding the appropriate use of land on which the Site is located. The public meeting will be legislative in nature and not a contested case hearing under the Texas Administrative Procedure Act (Texas Government Code, Chapter 2001).

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m., May 12, 2005, **and should be sent in writing** to Barry Lands, Project Manager, Texas Commission Environmental Quality, Remediation Division, MC 143, P. O. Box 13087, Austin, Texas 78711-3087 or facsimile at (512) 239-2450. The public comment period for this action will end at the close of the public meeting on May 12, 2005.

A portion of the record for this site, including documents pertinent to the TCEQ determination of eligibility, is available for review at the Richards Memorial Library, 1106 South Blackburn Street, Brady, Texas 76825, (325) 597-2617, during regular business hours.

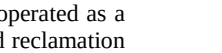
Copies of the complete public record file may be obtained during regular business hours at the TCEQ's Records Management Center, Building E, First Floor, Records Customer Service, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

Information is also available regarding the state Superfund program on the TCEQ's Web site located at *www.tnrcc.state.tx.us/permitting/remed/superfund/index.html*.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the TCEQ at (800) 633-9363 or (512) 239-2463. Requests should be made as far in advance as possible.

For further information about this site or the public meeting, please call Crystal Taylor, TCEQ Community Relations, at (800) 633-9363, extension 3844.

TRD-200501237
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 22, 2005



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 1, 2005**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 1, 2005**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Flash Mart Stores, Inc.; DOCKET NUMBER: 2004-0250-PST-E; TCEQ ID NUMBERS: 5657 and RN102318631; LOCATION: 8817 Clark Road, Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES

VIOLATED: 30 TAC §115.242(3)(J) and (L) and Texas Health and Safety Code (THSC), §382.085(b), by failing to have a gasket for the dust cap on the dry break vapor valve and failing to have a nozzle for a dispenser that is certified by the California Air Resource Board; PENALTY: $1,060; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: James O. Teague; DOCKET NUMBER: 2003-1408-MLM-E; TCEQ ID NUMBERS: RN102974466 and RN102997947; LOCATION: County Road 303, Box 2852 Rainbow, Somerville and 1 mile south of the Somerville-Bosque County line on State Highway 144, Bosque County, Texas; TYPE OF FACILITY: property; RULES VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with outdoor burning rules by conducting unauthorized burning of waste; and 30 TAC §330.5(a), by failing to properly dispose of municipal solid waste such that the waste was not a threat to the waters in the state nor to human health or the environment; PENALTY: $6,300; STAFF ATTORNEY: Barbara L. Klein, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICES: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335 and Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Travel Mart, Inc.; DOCKET NUMBER: 2003-1458-PST-E; TCEQ ID NUMBERS: 0010748 and RN101851723; LOCATION: 7041 United States Highway 77, Sinton, San Patricio County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3) and TCEQ Agreed Order Docket Number 2002-0111-PST-E, Ordering Provisions IV.2.a, IV.2.b, IV.2.e.ii., and IV.2.f., by failing to submit an amended registration on the current status of the facility and failing to provide written certification of the status; 30 TAC §334.55 and TCEQ Agreed Order Docket Number 2002-0111-PST-E, Ordering Provisions IV.2.e.i., by failing to permanently remove the underground storage tank system from service; PENALTY: $6,750; STAFF ATTORNEY: Rebecca Nash Petty, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

TRD-200501247
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 22, 2005

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 1, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 1, 2005**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: Alan and Yolanda Black dba Black's Construction and Caliche Pit; DOCKET NUMBER: 2004-0553-MSW-E; TCEQ ID NUMBER: RN104153705; LOCATION: off Highway 359, off J. C. Perez Road, Oilton, Webb County, Texas; TYPE OF FACILITY: caliche pit; RULES VIOLATED: 30 TAC §330.4(a) and §330.5(a), by failing to prevent the disposal of municipal solid waste at an unauthorized disposal site; PENALTY: $3,750; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3638, (956) 791-6611.

(2) COMPANY: David A. Fenoglio dba Sunset Water System; DOCKET NUMBER: 2003-0038-PWS-E; TCEQ ID NUMBERS: 1690007 and RN102693579; LOCATION: corner of West Front Street and Cottage Grove Avenue, near the railroad tracks, Sunset, Montague County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(f)(2) and (3)(A)(iv), by failing to maintain and have available for review, records of the dates that dead-end mains were flushed; 30 TAC §290.46(f)(2) and (3)(A)(v), by failing to maintain and have available for review, records of the dates of the cleaning by disinfection of new or repaired lines; 30 TAC §290.46(f)(2), by failing to maintain and have available for review records of the annual tank inspections for the three ground storage and pressure tanks; 30 TAC §290.41(c)(3)(C) and §290.46(n)(3), by failing to maintain and have available for review, records related to sealing information, including for pressure cementing, or a cement bonding log or other documentation to assure complete sealing of the annular space between the casing and the drill hole of the wells; 30 TAC §290.46(i), by failing to maintain and have available for review, records related to an adequate plumbing ordinance, regulations or service agreements with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(n)(2), by failing to maintain and have available an up-to-date distribution map on file at the facility; 30 TAC §290.121(a), by failing to maintain and have available for review an up-to-date chemical and microbiological monitoring plan on file; 30 TAC §290.46(f)(3)(A)(vi), by failing to maintain and have available for review records of the maintenance records of the water system equipment and facilities; 30 TAC §290.42(j), by failing to insure that all chemicals used in the treatment of the water supplied conformed to American National Standards Institute/National Sanitation Foundation Standards for direct additives and indirect additives and were certified as conforming to those Standards; 30 TAC §290.46(d)(2)(A), by failing to maintain a chlorine residual of 0.2 milligram per liter throughout the distribution system; 30 TAC §290.46(h), by failing to keep a supply of calcium hypochlorite on hand at the facility for making repairs, setting meters, and disinfecting new mains; 30 TAC §290.46(t), by failing to post a legible sign at the pump station

containing the name of the public water system and required contact information; 30 TAC §290.43(c)(2), by failing to maintain a lockable cover on each ground storage tank roof that is locked but capable of being opened for maintenance and inspections; 30 TAC §290.43(c), by failing to provide an overflow on the middle ground storage tank; 30 TAC §290.43(c), by failing to provide access ladders for all three ground storage tanks; 30 TAC §290.43(e), Agreed Order Number 2000-0031-PWS-E, Ordering Provision 2.c., and Texas Health and Safety Code (THSC), §341.0315(c), by failing to install an intruder-resistant fence with a lockable gate around the potable water tanks; 30 TAC §290.45(b)(1)(C)(iii), Agreed Order Number 2000-0031-PWS-E, Ordering Provision 2.e.ii., and THSC, §341.0315(c), by failing to provide at least two service pumps and a total service pump capacity of 2.0 gallons per minute per connection; 30 TAC §290.45(b)(1)(C)(ii), Agreed Order Number 2000-0031-PWS-E, Ordering Provision 2.e.i., and THSC, §341.0315(c), by failing to provide total storage capacity of 200 gallons per connection; 30 TAC §290.43(e) and THSC, §341.0315(c), by failing to provide an intruder-resistant fence with lockable gate around the potable water tanks; 30 TAC §290.46(u), by failing to plug abandoned wells or to prove through test results that the wells are in a non-deteriorated condition; 30 TAC §290.45(b)(1)(C)(i) and THSC, §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute per connection; 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide 2.0 gallons per minute per connection for service pump capacity; 30 TAC §290.41(c)(3)(B), by failing to provide a well with casing 18 inches above ground level; 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block around the well casing that covers a three-foot radius in all directions; 30 TAC §290.41(c)(3)(K), by failing to provide a seal on the wellhead and a well casing vent; 30 TAC §290.41(c)(3)(O), by failing to enclose the well with a locked, intruder-resistant fence or a locked, ventilated well house; 30 TAC §290.110(c)(5)(A), by failing to test the chlorine residual in the distribution system at least once every seven days; 30 TAC §290.46(v), by failing to install electrical wiring on the well in a mounted conduit in compliance with a local or national electrical code; 30 TAC §290.41(c)(1)(F), by failing to secure sanitary easements for the system's wells; 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.109(c)(2), (g)(4), §290.122(c), and THSC, §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis and failing to provide public notice of the failure to sample; and 30 TAC §290.109(b)(2), (f)(3), (g)(3), §290.122(b), and THSC, §341.031(a), by failing to prevent the facility from exceeding the maximum contaminate level for total coliform bacteria and failing to provide public notice of the violation; PENALTY: $4,725; STAFF ATTORNEY: Deborah A. Bynum, Litigation Division, MC 175, (512) 239-1976; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(3) COMPANY: Larry Ratliff, Inc.; DOCKET NUMBER: 2004-0942-MLM-E; TCEQ ID NUMBERS: A85535 and RN103776498; LOCATION: 2107 East Irving Road, Irving, Dallas County, and 975 South Highway 67, Midlothian, Ellis County, Texas; TYPE OF FACILITY: used oil transportation; RULES VIOLATED: 30 TAC §335.2(a) and (b), §335.43(a), and 40 Code of Federal Regulations (CFR) §270.1(a), by failing to obtain a permit or other authorization to transport, receive, store, and process industrial and hazardous waste; 30 TAC §335.62 and 40 CFR §262.11, by failing to conduct proper hazardous waste determination on cut up processed drums and two 55-gallon drums storing consolidated liquid residues from processing drums for disposal; 30 TAC §335.4, by failing to prevent the discharge of waste into or adjacent to waters in the state; 30 TAC §324.1 and 40 CFR §279.45(c), (d), and (g), by failing to comply with standards for the management of used oil; 30 TAC §324.11(2), by failing to register all specific used oil activities with the TCEQ; and 30 TAC §324.22 and §37.2011, by failing to demonstrate the soil remediation financial assurance requirements for used oil handlers; PENALTY: $20,000; STAFF ATTORNEY: Barbara L. Klein, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Michael Silvertooth dba Silvers Store & Motel; DOCKET NUMBER: 2004-1515-PST-E; TCEQ ID NUMBER: RN101864171; LOCATION: Farm-to-Market Road 21, one mile north of Lake Pittsburg, Titus County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum storage tanks; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay fees; PENALTY: $2,140; STAFF ATTORNEY: Mary Clair Lyons, Litigation Division, MC 175, (512) 239-6996; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(5) COMPANY: R.J. Smelley Company, Inc. dba R.J. Smelley Dairy; DOCKET NUMBER: 2001-0169-AGR-E; TCEQ ID NUMBERS: 02422 and RN101536886; LOCATION: 4750 Cattlebaron Drive, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: dairy; RULES VIOLATED: 30 TAC §321.39(f)(28), §305.125(1), TCEQ Permit Number 02422, Special Provisions Numbers 2.3 and 2.3.3, by failing to take annual soil samples from the land managements units and failing to submit soil sample analyses to the TCEQ; 30 TAC §321.39(a), (f)(26) and (19)(I)(ii), by failing to develop an adequate pollution prevention plan; 30 TAC §321.39(f)(28)(G) and TWC, §26.121, by failing to discontinue the application of waste to a field when phosphorous levels exceeded 200 parts per million and by failing to submit a nutrient utilization plan; 30 TAC §321.39(f)(29), §305.125(1), and TCEQ Permit Number 02422, Special Provision Number 2.4., by failing to conduct annual waste and irrigation wastewater analyses and failing to submit the analyses to TCEQ; 30 TAC §321.39(f)(18), by failing to prevent trees from growing on the embankments of the waste storage ponds; 30 TAC §321.39(f)(24)(K) and (19)(D) and TWC, §26.121, by failing to prevent ponding and puddling in earthen pens and failing to conduct irrigation in a manner to prevent ponding and puddling in irrigation fields; 30 TAC §321.40(1), by failing to ensure that all construction was completed to contain contaminated runoff during a 25-year, 24-hour rainfall event; 30 TAC §321.39(f)(24)(B), by failing to provide runoff control measures for waste storage piles; and 30 TAC §111.201, by failing to follow the outdoor burning prohibition; PENALTY: $25,500; STAFF ATTORNEY: Barbara Klein, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Star Tex Gasoline & Oil Distributors Inc. dba Star Trac 1; DOCKET NUMBER: 2003-0781-PST-E; TCEQ ID NUMBER: 0023481 and RN101378263; LOCATION: 5416 Leopard Street, Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks; and TWC, §7.101 and Default Order Number 2000-0294-PST-E, by failing to pay the administrative penalty assessed under the Default Order;

PENALTY: $4,730; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(7) COMPANY: The Walden Woods Company; DOCKET NUMBER: 2004-0865-MWD-E; TCEQ ID NUMBERS: 0014221001, 16464, and RN101522357; LOCATION: five miles east-southeast of the intersection of United States Highway 287 and Farm-to-Market Road 637, Eureka, Navarro County, Texas; TYPE OF FACILITY: domestic wastewater system; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System Permit Number 0014221001, Effluent Limitations and Monitoring Requirements 1, by failing to comply with the permitted effluent limitations for total suspended solids, ammonia nitrogen, and carbonaceous biochemical oxygen demand; PENALTY: $11,220; STAFF ATTORNEY: Ashley Kever, Litigation Division, MC 175, (512) 239-2987; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Tyler Pipe Company, A Division of McWane, Inc.; DOCKET NUMBER: 2003-0618-MLM-E; TCEQ ID NUMBERS: SK-0041-T and RN102679867; LOCATION: off United States Highway 69, approximately four miles north of Loop 323, Smith County, Texas; TYPE OF FACILITY: iron foundries; RULES VIOLATED: 30 TAC §116.115(c), Permit Number 26203, Special Condition Number 11, and THSC, §382.085(b), by failing to operate the coating application system within the limits and specifications set forth by the manufacturer; 30 TAC §116.115(c), Permit Number 26203, Special Condition Number 8, and THSC, §382.085(b), by exceeding the permitted usage limit a total of 163 days; 30 TAC §116.115(c), Permit Number 26203, Special Condition Numbers 16, 18, and 20, and THSC, §382.085(b), by failing to exercise good housekeeping practices; 30 TAC §116.115(c), Permit Number 26203, Special Condition Number 14(B), and THSC, §382.085(b), by failing to maintain complete usage records and have them readily available upon request; 30 TAC §116.116(b)(1), Permit Number 26203, and THSC, §382.085(b), by failing to conduct the mixing process in accordance with the representations made in the permit application; 30 TAC §116.110(a), Permit Number 9425, and THSC, §382.0518(a) and §382.085(b), by failing to obtain new source review (NSR) authorization for all emission points and pollutants; 30 TAC §101.20(3) and §116.160, Permit Number 9425, 40 CFR §51.166 and THSC, §382.085(b), by operating the impact molding process without obtaining prevention of significant deterioration (PSD) authorization prior to completing a major modification where the new emission increases in total suspended particulates are greater than or equal to 15 tons per year (tpy) and carbon monoxide (CO) is greater than or equal to 100 tpy; 30 TAC §101.10(b)(2) and THSC, §382.085(b), by failing to accurately report CO emissions; 30 TAC §116.110(a), Permit Number 8157, and THSC, §382.0518(a) and §382.085(b), by operating the Hermann Moldmaster process without obtaining NSR authorization for all emission points and pollutants; 30 TAC §101.20(3) and 116.160; 40 CFR §51.166, Permit Number 8157, and THSC, §382.085(b), by operating the Hermann Moldmaster process without obtaining PSD authorization prior to completing a major modification to the process, causing emission increases in total suspended particulate matter greater than or equal to 15 tpy and CO greater than or equal to 100 tpy; 30 TAC §101.221(a) and §116.115(c), Permit Number 8157, Special Condition Number 2, Permit Number 4246, Special Condition Number 6, and THSC, §382.085(b), by failing to maintain all air pollution capture and abatement equipment in good working order and operating properly during plant operations; 30 TAC §116.110(a)(1), Permit Number 26516, and THSC, §382.0518(a) and §382.085(b), by failing to represent all emissions generated from the graphite/isopropanol mixing and application operations and the core wash process in its application for an air permit; 30 TAC §116.116(a)(1), Permit Number 45728, and THSC, §382.085(b), by failing to route all volatile organic compounds (VOC) emissions from the impact millroom drying tunnel to a thermal oxidizer; 30 TAC §101.201(a) and THSC, §382.085(b), by failing to notify the TCEQ of an estimated reportable quantity emission event within 24 hours of the event being discovered; 30 TAC §106.144(4) and §116.110(a)(4), Permit by Rule Number 53044, and THSC, §382.085(b), by failing to submit a registration form to the TCEQ prior to relocating the sand storage silo; 30 TAC §116.110(a)(1) and THSC, §382.0518(a) and §382.085(b), by failing to obtain NSR authorization prior to constructing and operating the particulate matter (PM) stands process line; 30 TAC §116.116(a), Permit Number 22200, and THSC, §382.085(b), by failing to accurately represent the VOC emissions from the 4260 Casting and Coating Process; 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 01793, Effluent Limitations and Monitoring Requirements, Provision Number 1, and TWC, §26.121(a)(1), by exceeding the permitted effluent limits for chemical oxygen demand (COD), oil, grease, and Zinc; 30 TAC §319.11(a) and (b), and TPDES Permit Number 01793, Monitoring and Reporting, Provision Number 2, by failing to properly collect and preserve samples in one instance by using approved methods; Mulit-Sector General Permit (MSGP) Number TXR05P127, Part III, Section A.3.(b), by failing to conduct a survey of potential non-storm water sources and to test or inspect the storm sewer system for the presence of non-storm water flows; MSGP Number TXR05P127, Part III, Section A.5.(h), by failing to perform quarterly visual monitoring of the storm water discharge from each of the four storm water outfalls; 30 TAC §116.110(a), Permit Number 222000, and THSC, §382.0518(a) and §382.085(b), by operating the plant without a valid permit; 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by exceeding permit by rule emission limits for volatile organic compounds at the South Plant Production Finishing tank and not having other authorization for the emissions; 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to verify that actual emissions were within the emission rate represented in the permit application for the Torrit Baghouse; 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain NSR authorization for engaging in modifications involving the usage of mag rods and a bubbling pot; 30 TAC §116.160, 40 CFR §51.166, and THSC, §382.085(b), by failing to obtain PSD authorization prior to completing a major modification where the actual to potential emission increases in PM10 are greater than or equal to 15 tpy and CO are greater than or equal to 100 tpy; 30 TAC §116.116, Permit Number 4581, and THSC, §382.0518(a) and §382.085(b), by failing to operate the ductile inoculation fugitive emission collection system on the 65-ton furnace with an efficiency of 99% as represented in the permit amendment application; 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by constructing and operating the South Plant Impact Millroom dip tank without obtaining a permit or other authorization; 30 TAC §101.201(b), by failing to record and report all of the information required in the final record for the emission events; 30 TAC §116.115(c), TWC, §382.085(b), TCEQ Air Permit Number 4246, Special Provision Numbers 1 and 3, and TCEQ Air Permit Number 70403, Special Conditions Number 1, by failing to prevent unauthorized emissions released during emissions events; and 30 TAC §101.201(a), by failing to submit an initial notification within 24 hours after the discovery of an emission event; PENALTY: $1.5 million; STAFF ATTORNEY: Paul Sarahan, Litigation Division, MC 175, (512) 239-3423; James Biggins, Litigation Division, MC 175, (713) 767-3500. REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

TRD-200501246

Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 22, 2005

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Notice of Water Quality Applications

The following notices were issued during the period of March 14, 2005 through March 22, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711- 3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

CITY OF AUSTIN has applied for a major amendment to TPDES Permit No. 14036-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 150,000 gallons per day to a daily average flow not to exceed 300,000 gallons per day. The facility is located approximately 0.75 miles south of State Highway 71 and approximately 8 miles east of the intersection of State Highway 71 and U. S. Highway 183 in Travis County, Texas.

COLORADO COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 2 has applied for a renewal of TPDES Permit No. 10152-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 25 feet east of the intersection of Mansfield and Wirtz Streets in the City of Garwood in Colorado County, Texas.

DALLAS FORT WORTH INTERNATIONAL AIRPORT BOARD which operates the Dallas Fort Worth International Airport, has applied fora major amendment to TCEQ Permit No. WQ0001441000 to authorize modification to effluent limitations at Outfall 001 and the addition of Outfalls 014, 019, 020, 023, 025, and 059 which will discharge Other Storm Water on an intermittent and flow variable basis. The current permit authorizes the discharge of storm water runoff at a daily maximum flow not to exceed 4,500,000 gallons per day via Outfall 001. The facility is located within the northeast corner of Tarrant County and the northwest corner of Dallas County, just southeast of Grapevine Lake, in Tarrant and Dallas Counties, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 119 has applied for a renewal of TPDES Permit No. 12714-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located approximately 800 feet southeast of the intersection of Breen Road and North Houston Rosslyn Road in Harris County, Texas.

JACKSON COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. 10911-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 62,000 gallons per day. The facility is located at the east end of Elm Street and approximately 3,000 feet southeast of the intersection of Farm-to-Market Road 616 and Farm-to-Market Road 1593 in the eastern section of Lolita in Jackson County, Texas.

LUTHERAN OUTDOORS MINISTRY OF TEXAS, INC. has applied for a renewal of TPDES Permit No. 12168-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The facility is located approximately 1.8 miles northeast of the intersection of Farm-to-Market Road 155 and U.S. Highway 77 in Fayette County, Texas.

SAN ANTONIO WATER SYSTEM has applied for a renewal of Permit No. 10137-043, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 75,000 gallons per day via irrigation of 24 acres of non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located off State Highway 16 at the southwest corner of the intersection of State Highway 16 and Ranch Parkway, approximately 4 1/2 miles northwest of the intersection of State Highway 16 and Farm-to-Market Road 1604, and approximately 22 miles northwest of the Bexar County Courthouse in Bexar County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of Permit No. 11962-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 60,000 gallons per day via irrigation of 20 acres. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 2,300 feet southwest of the Frio River crossing of Farm-to-Market Road 1050 in the Garner State Park about 26 miles north of the City of Uvalde in Uvalde County, Texas.

WEBB COUNTY which operates a reverse osmosis process water treatment plant, has applied for a renewal of Permit No. WQ0004184000, which authorizes the disposal of reject water from the reverse osmosis treatment plant at a daily maximum flow not to exceed 28,800 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located North of State Highway 59, approximately 15 miles east of the City of Laredo, Webb County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE

The Texas Commission on Environmental Quality (TCEQ) has initiated a minor amendment of the Texas Pollutant Discharge Elimination System (TPDES) permit issued to the CITY OF GARLAND to correct pretreatment language. The facility is located at 750 Duck Creek Way; south of Lake Ray Hubbard Dam and north of Interstate Highway 20 near the Town of Sunnyvale in Kaufman County, Texas.

TRD-200501262
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 23, 2005

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Notice of Water Rights Application

Notices mailed March 22 and March 23, 2005.

APPLICATION NO. 5868; The Umphrey Family Limited Partnership, a Texas Limited Partnership, 490 Park Street, Beaumont, Texas 77704, Applicant, seeks a Water Use Permit pursuant to Texas Water Code 11.121 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Applicant seeks authorization to maintain an existing low-water crossing and to construct and maintain a second low-water crossing approximately eight miles northwest of San Marcos and seven miles east of Wimberly on the Blanco River, tributary of the San Marcos River, tributary of the Guadalupe River, Guadalupe River Basin in Hays County. The first crossing impounds 1.21 acre-feet of water with a surface area of 0.08 acre on the Blanco River at a point bearing, N 40.498 E, 318.70 feet

from the northeast corner of the John F. Brown Survey, Abstract No. A-72, also being at Latitude 30.002 N and Longitude 97.992 W. The proposed crossing will be constructed on the Blanco River at a point bearing S 1.352 W , 1,267.65 feet from the northeast corner of the David Holderman Survey, Abstract No. A-225, also being at Latitude 29.999 N and Longitude 97.994 W, and will impound 0.08 acre-foot of water with a surface area of 0.05 acre. The water impounded is for in-place recreation with no right of diversion requested. The Blanco River is a navigable stream, the bed of which is owned by the State of Texas and regulated by the General Land Office (GLO). The GLO determined that the low-water dams are inside a survey subject to the Small Bill and therefore the State has no public domain and a permit from the GLO would not be required to construct and maintain the low-water crossings. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application and fees were received on November 8, 2004, and additional information was received on January 6 and February 14, 2005. The application was declared administratively complete and filed with the Office of the Chief Clerk on February 17, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

Application No. 5875; Hanson Aggregates West, Inc., P.O. Box 650274, Irving, Texas 75265-0274, applicant, seeks a temporary Water Use Permit, pursuant to Texas Water Code 11.138 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Hanson Aggregates West, Inc. has applied for an temporary water right permit for authorization to divert and use 50 acre-feet of water within a two year period from the Red River, Red River Basin, for mining purposes in Cooke County. Water will be diverted at a maximum rate of 22.282 cfs (10,000 gpm) from a point located at 34.900 N Latitude, 97.185 W Longitude, being 20 miles northwest from the city of Gainsville and 12 miles northeast from Marysville, Cooke County. The temporary permit, if issued, will be junior in priority to all senior and superior water rights in the Red River Basin. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on December 15, 2004 and additional information and fees were received on February 22 and March 9, 2005. The application was declared administratively complete and filed with the Office of the Chief Clerk on March 11, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by April 13, 2005.

INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200501261
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 23, 2005

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Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 23, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 23, 2005**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Allina Business, Inc. dba Five Star Food Mart; DOCKET NUMBER: 2004-1956-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Number 35649, Regulated Entity Reference Number (RN) 101778272; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,780; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Brownfield Independent School District; DOCKET NUMBER: 2004-2070-PST-E; IDENTIFIER: PST Number 10138, RN101864809; LOCATION: Brownfield, Terry County, Texas; TYPE

OF FACILITY: bus barn; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Jill McNew, (512) 239-0560; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(3) COMPANY: Charter Roofing Co., Inc.; DOCKET NUMBER: 2004-2018-PST-E; IDENTIFIER: RN104302864; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: roofing company with fleet refueling operations; RULE VIOLATED: 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to equip the underground storage tank (UST) system with corrosion protection; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; 30 TAC §334.50(b)(1)(A) and (2)(A)(ii) and the Code, §26.3475(a) and (c)(1), by failing to monitor the UST system in a manner which will detect a release and by failing to monitor the UST system piping monthly for releases; 30 TAC §334.7(a)(1) and the Code, §26.346(a), by failing to register a UST; 30 TAC §334.8(c)(4)(B) and (5)(A)(i) and the Code, §26.346(a) and §26.3467(a), by failing to submit a current, accurate registration and self-certification form and by failing to make available to a common carrier a valid, current delivery certificate; and 30 TAC §334.51(b)(2)(B) and the Code, §26.3475(c)(2), by failing to equip the UST fill tube with a spill container, catchment basin, or enclosed in a liquid-tight manway, riser, or sump; PENALTY: $10,400; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Aarey Colloney, Inc. dba Cheek Grocery Store; DOCKET NUMBER: 2004-1725-PST-E; IDENTIFIER: PST Facility Identification Number 12295, RN101757391; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(3) and (7) and THSC, §382.085(b), by failing to maintain and keep records on site at the station; 30 TAC §334.8(c)(5)(C), by failing to ensure that all USTs are properly identified on the registration and self-certification form; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test a line leak detector for performance and reliability; and 30 TAC §334.8(c)(4)(A)(vii) and (5)(A)(i) and the Code, §26.3467(a), by failing to ensure that the UST registration and self-certification form is fully and accurately completed and by failing to make available a valid, current delivery certificate; PENALTY: $11,200; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: Circle K Stores, Inc. dba Circle K Store 2705313; DOCKET NUMBER: 2004-1917-AIR-E; IDENTIFIER: Air Account Number EE1746A, RN102767134; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by allegedly offering for sale gasoline with an oxygen content lower than the 2.7% by weight; PENALTY: $600; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(6) COMPANY: Coastal King, LTD; DOCKET NUMBER: 2004-0447-PST-E; IDENTIFIER: PST Facility Identification Number 73780, RN102833662; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures; and 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III) and the Code, §26.3475(a) and (c), by failing to monitor the USTs for releases; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(7) COMPANY: Coronado Golf and Country Club; DOCKET NUMBER: 2004-1981-AIR-E; IDENTIFIER: Air Account Number EE1689K, RN100819820; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: membership sport and recreation club; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by failing to dispense gasoline with an oxygen content lower than 2.7% by weight; PENALTY: $816; ENFORCEMENT COORDINATOR: Mauricio Olaya, (915) 834-4949; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(8) COMPANY: Cripple Creek Restaurant, Inc. dba Cripple Creek Restaurant; DOCKET NUMBER: 2004-1534-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 2330044, RN101657872; LOCATION: Del Rio, Val Verde County, Texas; TYPE OF FACILITY: transient/non-community water supply; RULE VIOLATED: 30 TAC §290.109(b)(2), (c)(2)(F) and (3)(A)(ii), and §290.122(a)(1)(A) and (c)(1)(B), and THSC, §341.033(d) and §341.0315(c), by exceeding the maximum contaminant level for total coliform bacteria, by failing to collect and submit the appropriate number of additional samples, and by failing to conduct repeat monitoring for coliform; and 30 TAC §290.51(a)(3) and the Code, §5.702, by failing to pay past due public health service fees; PENALTY: $5,600; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 1403 Seymour, Suite 2, Laredo, Texas 78040-8752, (956) 791-6611.

(9) COMPANY: Frank Kalsbeek dba Dairy Cow Compost; DOCKET NUMBER: 2004-1850-WQ-E; IDENTIFIER: Water Quality General Permit Identification Number WQG200003, RN104385364; LOCATION: Dublin, Erath County, Texas; TYPE OF FACILITY: animal waste composting; RULE VIOLATED: Water Quality General Permit Number WQG200003 and the Code, §26.121(a)(1), by failing to prevent an unauthorized discharge of agriculture waste; PENALTY: $600; ENFORCEMENT COORDINATOR: Brandon Smith, (512) 239-4471; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Dauglas Enterprises, Inc. dba New K & T Quick Stop; DOCKET NUMBER: 2004-1938-PST-E; IDENTIFIER: PST Facility Identification Number 25165, RN102439932; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Jill McNew, (512) 239-0560; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: De La Fuente Enterprises, LLC dba De La Fuente Inc.; DOCKET NUMBER: 2004-1896-PST-E; IDENTIFIER: PST Facility Identification Number 75818, RN103767984; LOCATION: Eagle Pass, Maverick County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,900; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(12) COMPANY: Domingo Escobedo dba Escobedo Exxon; DOCKET NUMBER: 2004-2008-PST-E; IDENTIFIER: PST Facility Identification Number 32186, RN102245271; LOCATION: Crane, Crane County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Melissa Keller, (512)

239-1768; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(13) COMPANY: Evans Houston Corporation dba Shelton Road Drumming Plant; DOCKET NUMBER: 2004-0359-IHW-E; IDENTIFIER: Solid Waste Registration Number 32072, RN101450005; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: drum reconditioning and packaging; RULE VIOLATED: 30 TAC §335.112(a)(9) and 40 Code of Federal Regulations §265.195(a) and (c), by failing to conduct and provide documents for inspections conducted on tanks; PENALTY: $2,675; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Green Ribbon Enterprises, Inc. dba Kwik Serve; DOCKET NUMBER: 2004-1797-PST-E; IDENTIFIER: PST Facility Identification Number 4969, RN101882959; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,700; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Highway Travel Centers, Inc. dba Roadrunner Travel; DOCKET NUMBER: 2004-1707-PST-E; IDENTIFIER: PST Facility Identification Number 72190, RN102485794; LOCATION: Robstown, Nueces County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to conduct proper release detection; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(16) COMPANY: Jerry D. Womack dba J & H; DOCKET NUMBER: 2004-2059-PST-E; IDENTIFIER: PST Facility Identification Number 73366, RN102250081; LOCATION: Azle, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,900; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Salim Hussain dba Kirby Food 1; DOCKET NUMBER: 2002-0077-PST-E; IDENTIFIER: PST Facility Identification Number 24663; LOCATION: Tyler, Smith County, Texas; TYPE OF FACILITY: retail gasoline station; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; 30 TAC §334.8(c)(4)(B) and (5)(A)(i) and the Code, §26.346(a) and §26.3467(a), by failing to submit the UST compliance certification form and by failing to make available to a common carrier a valid, current delivery certificate; 30 TAC §334.51(b)(2)(C) and the Code, §26.3475(c)(2), by failing to demonstrate overfill protection equipment; 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to demonstrate corrosion protection for the UST systems; 30 TAC §334.50(b)(2)(A)(i)(III) and (ii)(I), and (d)(1)(B)(iii)(I), and the Code, §26.3475(c)(1), by failing to conduct annual line tightness tests for the pressurized piping system and the annual performance test and by failing to conduct inventory volume measurements for substance inputs, withdrawals, and amounts still remaining in the tanks; and 30 TAC §334.46(g)(1)(H), by failing to properly cap, label, and secure all monitoring and observation wells; PENALTY: $27,600; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(18) COMPANY: Laguna Madre Water District; DOCKET NUMBER: 2004-1949-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10350001, RN102079852; LOCATION: Port Isabel, Cameron County, Texas; TYPE OF FACILITY: domestic wastewater system; RULE VIOLATED: 30 TAC §305.125(1) and the Code, §26.121(a), by failing to comply with the permitted effluent limits; PENALTY: $12,375; ENFORCEMENT COORDINATOR: Brandon Smith, (512) 239-4471; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(19) COMPANY: Lattimore Materials Company, L.P. dba Coppell Ready Mix; DOCKET NUMBER: 2004-2020-WQ-E; IDENTIFIER: TPDES Permit Number TXG110116, RN102535440; LOCATION: Coppell, Dallas County, Texas; TYPE OF FACILITY: ready-mix concrete manufacturing; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number TXG110116, and the Code, §26.121(a), by failing to comply with permitted effluent limits for total suspended solids and pH; PENALTY: $2,080; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Lone Star Corrugated Container Corporation; DOCKET NUMBER: 2005-0013-PST-E; IDENTIFIER: PST Facility Identification Number 16698, RN100857358; LOCATION: Irving, Dallas County, Texas; TYPE OF FACILITY: industrial and chemical manufacturing; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $800; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: MFP Gas Service Company, L.C. dba Highway Oil; DOCKET NUMBER: 2004-1700-PST-E; IDENTIFIER: PST Facility Identification Number 1274, RN101565356; LOCATION: White Settlement, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to provide corrosion protection; and 30 TAC §334.8(c)(5)(C), by failing to ensure that all USTs are properly identified on the registration and self-certification form; PENALTY: $8,000; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Alex Mair dba Mair Rentals; DOCKET NUMBER: 2004-0909-PWS-E; IDENTIFIER: PWS Number 0040053, RN104248182; LOCATION: Rockport, Aransas County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(b)(2) and (d)(3)(C)(i), by failing to maintain a chlorine residual of 0.2 milligrams per liter and by failing to measure the free chlorine residual; 30 TAC §290.42(e)(3), by failing to ensure that disinfection equipment is selected and installed; 30 TAC §290.45(b)(1)(A)(ii) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 50 gallons per connection; 30 TAC §290.46(e)(4)(A) and (r), by failing to provide a certified operator and by failing to provide a minimum pressure of 35 pounds per square inch throughout the distribution system; 30 TAC §290.41(c)(1)(F) and (3)(K), (M), (N), and (O), by failing to provide a sanitary easement for the well, by failing to provide a proper casing vent for the well, by failing to provide a raw water sampling tap for the well, by failing to provide a flow meter for the well, and by failing to ensure that the well house is locked; and 30 TAC §290.109(c)(2)(A) and THSC, §341.033(d), by failing to collect monthly bacteriological samples; PENALTY: $2,680; ENFORCEMENT COORDINATOR: Audra

Ruble, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(23) COMPANY: Namj.C, Inc. dba M & S Express; DOCKET NUMBER: 2004-1576-PST-E; IDENTIFIER: PST Facility Identification Number 39544, RN102029527; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.7(d)(3), by failing to amend the UST registration to reflect correct tank information; and 30 TAC §334.10(b), by failing to provide documentation of corrosion and overfill protection; PENALTY: $4,880; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(24) COMPANY: Naurin, Inc. dba Shell III; DOCKET NUMBER: 2004-0432-PST-E; IDENTIFIER: PST Facility Identification Number 13710, RN101563476; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(1) - (4) and THSC, §382.085(b), by failing to maintain, for review, a copy of the facility's California Air Resource Board Executive Order, Stage II employee training records; PENALTY: $1,150; ENFORCEMENT COORDINATOR: Chris Friesenhahn, (210) 490-3096; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: City of Pearsall; DOCKET NUMBER: 2003-0377-MWD-E; IDENTIFIER: TPDES Permit Number 10360-001; LOCATION: Pearsall, Frio County, Texas; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10360-001, and the Code, §26.121(a), by failing to comply with permitted limits for ammonia nitrogen and five-day carbonaceous biochemical oxygen demand; PENALTY: $4,040; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(26) COMPANY: Red Creek Municipal Utility District; DOCKET NUMBER: 2004-1550-PWS-E; IDENTIFIER: PWS Number 2260101, RN101453082; LOCATION: San Angelo, Tom Green County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.104(f)(2) and THSC, §341.031(a), by failing to maintain at least 0.2 milligrams per liter free chlorine residual; PENALTY: $180; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(27) COMPANY: Joe Adams dba Rolling Hills Convenience Store; DOCKET NUMBER: 2004-2015-PST-E; IDENTIFIER: PST Facility Identification Number 75592, RN103048757; LOCATION: Hempstead, Waller County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,900; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: Sarabecca, GP LLC; DOCKET NUMBER: 2004-1481-MWD-E; IDENTIFIER: TPDES Permit Number 13019001, RN100878602; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 13019001, and the Code, §26.121(a), by allegedly exceeding the permitted effluent limit for total ammonia nitrogen, dissolved oxygen, and phosphorus; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Larry King, (512) 339-2929; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(29) COMPANY: Ruben Cruz dba Super Circle 7 Food Store; DOCKET NUMBER: 2004-1129-PST-E; IDENTIFIER: PST Facility Identification Number 67357, RN102861325; LOCATION: Alto Bonito, Starr County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(30) COMPANY: Vericenter, Inc.; DOCKET NUMBER: 2004-2047-PST-E; IDENTIFIER: PST Facility Identification Number 46284, RN104403696; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: data processing facility with a gasoline dispensing station; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(A)(i) and the Code, §26.3467(a), by failing to submit a self-certification renewal and by failing to make available to a common carrier a valid, current delivery certificate; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200501234
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 22, 2005

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Department of Family and Protective Services

Title IV-B Child and Family Services Plan

The Texas Department of Family and Protective Services (FPS), as the designated agency to administer Title IV-B programs in the state of Texas, is developing the annual update of the Title IV-B Child and Family Services Plan (CFSP) for Texas. Under guidelines issued by the U. S. Department of Health and Human Services, Administration for Children and Families, FPS is required to review the progress made in the previous year toward accomplishing the goals and objectives identified in the state's five-year CFSP for the period from October 1, 2004, through September 30, 2009.

The CFSP Annual Progress and Services Report (APSR) is required for the state to receive its federal allocation for fiscal year 2006 authorized under Title IV-B of the Social Security Act, Subparts 1 and 2, and the Child Abuse Prevention and Treatment Act (CAPTA). The update also gives states an opportunity to apply for fiscal year 2005 funds for the Chafee Foster Care Independence Program. The annual update referenced above must be submitted by June 30, 2005.

The purpose of this notice is to solicit input in the development of the annual update. This input will enable the agency to consider and include any changes in our state plan in order to best meet the needs of the children and families the agency serves. Members of the public can obtain more detailed information regarding the CFSP from the FPS web site at: http://www.dfps.state.tx.us. The web site includes a copy of last year's annual update and an outline of the state's proposed new CFSP goals and objectives.

Written comments regarding the annual update or the new five-year plan may be faxed or mailed to: Texas Department of Family and Protective Services, Attn: Janis Brown, P.O. Box 149030, MC E-557, Austin, Texas 78714-9030, phone (512) 438-3312; fax: (512) 438-3782. The comments must be received no later than May 2, 2005.

TRD-200501223
Gerry Williams
General Counsel
Department of Family and Protective Services
Filed: March 21, 2005

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Department of State Health Services

Notice of Agreed Order with Benson Chiropractic, Inc.

On March 21, 2005, the Radiation Program Officer, Department of State Health Services (department), approved the settlement agreement between the department and Benson Chiropractic, Inc. (registrant-R18353) of Bay City. A total administrative penalty in the amount of $2,000 was assessed the registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant will also comply with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200501229
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: March 21, 2005

♦ ♦ ♦

Notice of Agreed Order with Pineywoods Diagnostic Clinic, P.A.

On March 21, 2005, the Radiation Program Officer, Department of State Health Services (department), approved the settlement agreement between the department and Pineywoods Diagnostic Clinic, P.A. (registrant-R14344) of Huntington. A total administrative penalty in the amount of $2,000 was assessed the registrant for violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200501228
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: March 21, 2005

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Notice of Opportunity for Certification as a Retail Electronic Cash Register System for the Special Supplemental Nutrition Program for Women, Infants and Children Electronic Benefits Transfer System

On June 1, 2004, the Department of State Health Services (department) began piloting an off-line, smart card based electronic benefit transfer (EBT) system in the El Paso, Texas area. The EBT system replaces the paper voucher system supporting food delivery for participants in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). The department plans to expand EBT system operations beyond El Paso as early as October, 2005; statewide rollout is expected to be complete in November, 2006. WIC participants redeem food benefits at any one of more than 2700 WIC-authorized retail sites statewide.

Retail electronic cash register (ECR) systems capable of initiating WIC EBT transactions are divided into two types: Integrated and Stand Beside (Stand Alone). Integrated WIC EBT systems are ECR systems that have been modified to accept WIC smart cards, initiate off-line WIC EBT transactions and decrement authorized amounts from the food prescription stored on the card, and transmit claim files to the WIC host processor for settlement. Integrated WIC EBT systems accept multiple tender types, such as cash, credit, debit, food stamps, Temporary Assistance to Needy Families (TANF) and WIC. Stand Beside or Stand Alone WIC EBT systems are single-tender ECR systems designed to accept only WIC EBT cards in payment for the delivery of authorized WIC foods. A Stand Beside WIC EBT system operates alongside a store's existing ECR system, requiring the clerk to 'double-scan' items into and to maintain UPC and price data in both the store and WIC EBT ECR systems. A WIC EBT system is 'Stand Alone' if the grocer currently has no installed ECR. Texas WIC expects the majority of WIC-authorized supermarkets, medium and large grocery chains, independents and convenience stores will use integrated WIC EBT systems. Small volume WIC stores and those stores selling only WIC foods are expected to use either a stand beside or stand alone WIC EBT system.

In El Paso, grocers purchased their own hardware and operating system software from the vendor designated by Texas WIC. Texas WIC employed a Retail Support Contractor to provide help desk support and on-site services, including hardware warranty and maintenance. In Texas, the Stand Beside WIC EBT system piloted in El Paso consists of a custom host software application (kWICpos), Hypercom ICE 6000 terminals with an Application Programming Interface (API), and a back room controller. Currently, WIC provides Level II and Level III software support to grocers operating stand beside and stand alone WIC EBT systems. Texas WIC acquires and processes claims submitted by WIC-authorized stores for settlement.

ECR CERTIFICATION

Texas WIC would like to determine if a commercially available "low cost" small grocer solution will be available for WIC-authorized grocers in lieu of continuing to develop/maintain kWICpos software and provide hardware and software support in El Paso and eventually statewide. To be eligible for consideration, an ECR system must be certified as "WIC Ready" in Texas. Texas WIC has implemented a comprehensive ECR certification process confirmed to ensure system accuracy, reliability, integrity and performance.

Grocer ECR system and software manufacturers, technicians, and others are encouraged to provide product and service information and pricing to WIC for ECR systems that may be able to achieve WIC certification. Information on any ECR system(s) certified will be distributed to all WIC authorized grocers who have not yet committed to the implementation of an integrated system.

CONTACT INFORMATION

Interested parties should contact either John Brewer at (512) 458-7444 or Penny Tisdale at (512) 415-2227, Department of State Health Services, 1100 West 49th Street, Austin, Texas, not later than April 12, 2005.

TRD-200501230
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: March 21, 2005

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by WELLCARE PRESCRIPTION SERVICES, INC., a foreign life, accident and/or health company. The home office is in Tampa, Florida.

Application for admission to the State of Texas by AMERITRUST INSURANCE CORPORATION ("AMERITRUST"), a foreign fire and/or casualty company. The home office is in Sarasota, Florida.

Application for admission to the State of Texas by LYNDON SOUTHERN INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Marksville, Louisiana.

Application for incorporation in the State of Texas by SELECTCARE HEALTH PLANS, INC., a domestic Health Maintenance Organization (HMO). The home office is in Houston, Texas.

Application for incorporation in the State of Texas by MHNET LIFE AND HEALTH INSURANCE COMPANY, a domestic life, accident and/or health company. The home office is in Austin, Texas.

Application to change the name of GENERAL ELECTRIC MORTGAGE INSURANCE CORPORATION OF NORTH CAROLINA to GENWORTH MORTGAGE INSURANCE CORPORATION OF NORTH CAROLINA, a foreign fire and/or casualty(Mortgage Guaranty) company. The home office is in Raleigh, North Carolina.

Application to change the name of GE LIFE AND ANNUITY ASSURANCE COMPANY to GENWORTH LIFE AND ANNUITY INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Richmond, Virginia.

Application to change the name of GENERAL ELECTRIC CAPITAL ASSURANCE COMPANY to GENWORTH LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Richmond, Virginia.

Application to change the name of GENERAL ELECTRIC MORTGAGE INSURANCE CORPORATION to GENWORTH MORTGAGE INSURANCE CORPORATION, a foreign fire and/or casualty (Mortgage Guaranty) company. The home office is in Raleigh, North Carolina.

Application to change the name of GENERAL ELECTRIC HOME EQUITY INSURANCE CORPORATION OF NORTH CAROLINA to GENWORTH HOME EQUITY INSURANCE CORPORATION, a foreign fire and/or casualty (Credit Guaranty) company. The home office is in Raleigh, North Carolina.

Application to change the name of GE RESIDENTIAL MORTGAGE INSURANCE CORPORATION OF NORTH CAROLINA to GENWORTH RESIDENTIAL MORTGAGE INSURANCE CORPORATION OF NORTH CAROLINA, a foreign fire and/or casualty (Mortgage Guaranty) company. The home office is in Raleigh, North Carolina.

Application to change the name of GE GROUP LIFE ASSURANCE COMPANY to GENWORTH LIFE AND HEALTH INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Enfield, Connecticut.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas, 78701, within 20 days after this notice is published in the Texas Register.

TRD-200501215

Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: March 17, 2005

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Company Licensing

Application for admission to the State of Texas by AMFIRST INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Oklahoma City, OK.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M\C 305-2C, Austin, Texas, 78701, within 20 days after this notice is published in the *Texas Register*.

TRD-200501265
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: March 23, 2005

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of GREGORY T WHITE (using the assumed name of ACHIEVE FINANCIAL SERVICES), a domestic third party administrator. The home office is TYLER, TEXAS.

Application for admission to Texas of DESTINY MANAGEMENT COMPANY, LLC, a foreign third party administrator. The home office is BETHESDA, MARYLAND.

Any objections must be filed within 20 days after this notice is published in the Texas Register, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200501214
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: March 17, 2005

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Legislative Budget Board

Notice of Request for Proposals

The Legislative Budget Board (LBB) announces the issuance of a Request for Proposals (RFP # HB7.2005.SPR.0007) from qualified, independent firms to provide consulting services to the LBB. The successful respondent will assist the LBB in conducting a management and performance review of Austwell-Tivoli Independent School District (ATISD). The LBB reserves the right, in its sole discretion, to award one or more contracts for this review. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about April 12, 2005, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact Bill Parr, Assistant Director, Legislative Budget Board, 1501 N. Congress, Fifth Floor, Austin, Texas 78701, telephone number: (512) 463-1200, to obtain a copy of the RFP. The LBB will mail copies

of the RFP only to those specifically requesting a copy. The RFP was made available for pick up at the above-referenced address on March 15, 2005, between 10:00 a.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The LBB also made the complete RFP available electronically on the Texas Marketplace at: http://esbd.tbpc.state.tx.us and on the LBB website at http:/www.lbb.state.tx.us after 10:00 a.m. CZT, on March 15, 2005.

Questions: All questions regarding the RFP must be sent via facsimile to Bill Parr at (512) 475-2902, not later than 2:00 p.m. CZT, on March 28, 2005. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace and the LBB website no later than March 29, 2005, or as soon thereafter as practical.

Mandatory Letters of Intent: All potential respondents must submit non-binding Mandatory Letters of Intent to Propose, which must be received in the issuing office no later than 2:00 p.m. CZT, on March 28, 2005. Only the proposals of those respondents who submit a timely Letter of Intent will be considered.

Closing Date: Proposals must be received in the issuing office at the address specified above no later than 2:00 p.m. CZT, on April 5, 2005. Proposals received after this time and date will not be considered. Respondents shall be solely responsible for confirming the timely receipt of proposals.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The LBB will make the final decision regarding the award of a contract or contracts. The LBB reserves the right to award one or more contracts under this RFP. The LBB reserves the right to accept or reject any or all proposals submitted.

The LBB is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. The LBB shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows:

Issuance of RFP - March 15, 2005, after 10:00 a.m. CZT;

Questions Due - March 28, 2005, 2:00 p.m. CZT;

Letters of Intent Due - March 28, 2005, 2:00 p.m. CZT;

Official Responses to Questions Posted - March 29, 2005, or as soon thereafter as practical;

Proposals Due - April 5, 2005, 2:00 p.m. CZT;

Contract Execution - April 12, 2005, or as soon thereafter as practical;

Commencement of Project Activities - April 12, 2005, or as soon thereafter as practical.

TRD-200501193
Bill Parr
Assistant Director
Legislative Budget Board
Filed: March 16, 2005

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Notice of Request for Proposals

The Legislative Budget Board (LBB) announces the issuance of a Request for Proposals (RFP # HB7.2005.SPR.0008) from qualified, independent firms to provide consulting services to the LBB. The successful respondent will assist the LBB in conducting a management and performance review of Karnack Independent School District (KISD). The LBB reserves the right, in its sole discretion, to award one or more contracts for this review. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about April 12, 2005, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact Bill Parr, Assistant Director, Legislative Budget Board, 1501 N. Congress, Fifth Floor, Austin, Texas 78701, telephone number: (512) 463-1200, to obtain a copy of the RFP. The LBB will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick up at the above-referenced address on March 15, 2005, between 10:00 a.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The LBB also made the complete RFP available electronically on the Texas Marketplace at: http://esbd.tbpc.state.tx.us and on the LBB website at http:/www.lbb.state.tx.us after 10:00 a.m. CZT, on March 15, 2005.

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The LBB reserves the right to accept or reject any or all proposals submitted. The LBB is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. The LBB shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows:

Issuance of RFP - March 15, 2005, after 10:00 a.m. CZT;

Questions Due - March 28, 2005, 2:00 p.m. CZT;

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Official Responses to Questions Posted - March 29, 2005, or as soon thereafter as practical;

Proposals Due - April 5, 2005, 2:00 p.m. CZT;

Contract Execution - April 12, 2005, or as soon thereafter as practical;

Commencement of Project Activities - April 12, 2005, or as soon thereafter as practical.

TRD-200501194
Bill Parr
Assistant Director
Legislative Budget Board
Filed: March 16, 2005

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Texas Lottery Commission

Instant Game Number 546 "Cash Money"

1.0 Name and Style of Game.

A. The name of Instant Game No. 546 is "CASH MONEY". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 546 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 546.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, BILL SYMBOL, $1.00, $2.00, $4.00, $10.00, $20.00, $50.00, $100, $200, $1,000 and $24,000.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 546 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
BILL SYMBOL	DBL
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$200	TWO HUND
$1,000	ONE THOU
$24,000	24 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 546 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWL	$12.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00,$4.00, $5.00, $10.00, $12.00 or $20.00

H. Mid-Tier Prize - A prize of $50.00 or $200.

I. High-Tier Prize- A prize of $1,000 or $24,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (546), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 546-0000001-001.

L. Pack - A pack of "CASH MONEY" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 and 005 will be on the top page; tickets 006 and 010 on the next page; etc.; and tickets 246 and 250 will be on the last page. A ticket will be folded over on both the front and back of the book so both ticket art and ticket backs are displayed in the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CASH MONEY" Instant Game No. 546 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CASH MONEY" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of Your Numbers play symbols to either Winning Number play symbol the player wins the prize indicated for that number. If a player reveals a bill play symbol the player wins double the prize indicated for that symbol instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical "spot for spot" play data.

B. No duplicate non-winning Your Numbers play symbols on a ticket.

C. No duplicate Winning Numbers play symbols on a ticket.

D. No 3 or more like non-winning prize symbols on a ticket.

E. The doubler symbol will only appear as dictated by the prize structure.

F. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "CASH MONEY" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $12.00, $20.00, $50.00 or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CASH MONEY" Instant Game prize of $1,000 or $24,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASH MONEY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "CASH MONEY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "CASH MONEY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 546. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 546 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	1,189,440	8.47
$4	604,800	16.67
$5	161,280	62.50
$10	80,640	125.00
$12	60,480	166.67
$20	40,320	250.00
$50	40,320	250.00
$200	13,104	769.23
$1,000	252	40,000.00
$24,000	11	916,363.64

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.60. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 546 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 546, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501251
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 22, 2005

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Instant Game Number 587 "Find the 5's"

This game procedure is being amended to reflect new language added to section 1.2.F and Table 3. This amended game procedure supersedes the procedure published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1691).

1.0 Name and Style of Game.

A. The name of Instant Game No. 587 is "FIND THE 5'S". The play style is "key number match with prize legend".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 587 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 587.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, and 9.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 587 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 587 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00, $15.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00 or $200.

I. High-Tier Prize- A prize of $2,000 or $25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (587), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 587-0000001-001.

L. Pack - A pack of "FIND THE 5'S" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 002 will be on the top page; ticket 003 and 004 will be on the next page; etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in an A- B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "FIND THE 5'S" Instant Game No. 587 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "FIND THE 5'S" Instant Game is determined once the latex on the ticket is scratched off to expose 25 (twenty-five) Play Symbols. The player must count the number of "5" play symbols. If a player reveals a minimum of three (3) "5" play symbols, or a maximum of twelve (12) "5" play symbols, the player will win the corresponding prize in the prize legend. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 25 (twenty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 25 (twenty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 25 (twenty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 25 (twenty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No five or more like non-winning play symbols on a ticket.

C. No three or more like adjacent non-winning play symbols in a row, column or diagonal.

E. Every ticket will contain at least one 5 play symbol.

F. No ticket will contain 13 or more 5 play symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "FIND THE 5'S" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $15.00, $20.00, $50.00 or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of

proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "FIND THE 5'S" Instant Game prize of $2,000 or $25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "FIND THE 5'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "FIND THE 5'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "FIND THE 5'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 587. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 587 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2.00	964,800	8.33
$4.00	514,560	15.63
$5.00	160,800	50.00
$10.00	96,480	83.33
$15.00	64,320	125.00
$20.00	32,160	250.00
$50.00	16,080	500.00
$200	8,040	1,000.00
$2,000	134	60,000.00
$25,000	16	502,500.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.33. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 587 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 587, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501250
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 22, 2005

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Instant Game Number 592 "Bonus Numbers"

1.0 Name and Style of Game.

A. The name of Instant Game No. 592 is "BONUS NUMBERS". The play style for game Scene 1 is "key number match with Bonus Box". The play style for game Scene 2 is "key number match with Bonus Box". The play style for game Scene 3 is "yours beats theirs with Bonus Box. The play style for game Scene 4 is "match-up with Bonus Box". Scene 5 is "match-up with Bonus Box".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 592 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 592.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $25.00, $50.00, $250, $1,000, 1, 2, 3, 4, 5, 6, 7, 8, 9, Diamond Symbol, Club Symbol, Heart Symbol, Spade Symbol, GOLD BAR SYMBOL, DOLLAR SIGN SYMBOL, HORSESHOE SYMBOL, LEMON SYMBOL, BANANA SYMBOL, POT OF GOLD SYMBOL, MELON SYMBOL, CHERRY SYMBOL, APPLE SYMBOL, GRAPE SYMBOL, BELL SYMBOL, PLUM SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, STAR SYMBOL, COIN SYMBOL and STACK OF BILLS SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 592 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$250	TWO FTY
$1,000	ONE THOU
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
DIAMOND SYMBOL	DIAM
CLUB SYMBOL	CLUB
HEART SYMBOL	HEART
SPADE SYMBOL	SPADE
GOLD BAR SYMBOL	GBAR
DOLLAR SIGN SYMBOL	DLRS
HORSESHOE SYMBOL	SHOE
LEMON SYMBOL	LEMN
BANANA SYMBOL	BNNA
POT OF GOLD SYMBOL	GOLD
MELON SYMBOL	MELN
CHERRY SYMBOL	CHRY
APPLE SYMBOL	APPL
GRAPE SYMBOL	GRPE
BELL SYMBOL	BELL
PLUM SYMBOL	PLUM
CROWN SYMBOL	CRWN
DIAMOND SYMBOL	DMND
STAR SYMBOL	STAR
COIN SYMBOL	COIN
STACK OF BILLS SYMBOL	BLLS

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 592 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $55.00 or $250.

I. High-Tier Prize - A prize of $1,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (592), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 592-0000001-001.

L. Pack - A pack of "BONUS NUMBERS" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 246 to 250 will be on the last page. A ticket will be folded over on both the front and back of the book so both ticket art and ticket backs are displayed in the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BONUS NUMBERS" Instant Game No. 592 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BONUS NUMBERS" Instant Game is determined once the latex on the ticket is scratched off to expose 67 (sixty-seven) Play Symbols. In the game Scene 1, if a player matches any of YOUR AMOUNTS play symbols to the WINNING AMOUNT play symbol the player wins prize indicated. If a player reveals a "1" play symbol in the Bonus Box the player wins $5.00 automatically. In the game Scene 2, if player matches any of YOUR NUMBERS play symbols to the WINNING NUMBER play symbol the player wins prize indicated. If a player reveals a "2" play symbol in the Bonus Box the player wins $5.00 automatically. In the game Scene 3, if a player's YOUR NUMBER play symbol beats THEIR NUMBER play symbol within a game the player wins prize indicated for that game. If a player reveals a "3" play symbol in the Bonus Box the player wins $5.00 automatically. In the game Scene 4, if a player matches four (4) identical play symbols in the same horizontal row the player wins prize indicated for that row. If a player reveals a "4" play symbol in the Bonus Box the player wins $5.00 automatically. In the game Scene 5, if player matches three (3) identical play symbols in the same game, the player wins prize indicated for that game. If a player reveals a "5" play symbol in the Bonus Box the player wins $5.00 automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 67 (sixty seven) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 67 (sixty-seven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 67 (sixty-seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 67 (sixty-seven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Scene 1: No duplicate non-winning YOUR AMOUNTS play symbols or prize symbols.

C. Scene 2: Non-winning play symbols will never occur with the same prize symbol (i.e. 5 and $5) on a ticket.

D. Scene 2: No duplicate non-winning YOUR NUMBERS play symbols or prize symbols.

E. Scene 2: No WINNING NUMBER play symbol will never match the BONUS number play symbol on that ticket.

F. Scene 3: No ties between YOURS and THEIRS play symbols.

G. Scene 3: No duplicate games.

H. Scene 3: No duplicate non-winning prize symbols.

I. Scene 4: No duplicate non-winning rows in the same order.

J. Scene 4: The card suits will vary among the possible locations.

K. Scene 4: No 4 like play symbols in a column or diagonal.

L. Scene 4: No duplicate non-winning prize symbols.

M. Scene 5: No duplicate non-winning rows in the same order.

N. Scene 5: No three (3) like play symbols in a column or diagonal.

O. Scene 5: No duplicate non-winning prize symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS NUMBERS" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $55.00 or $250, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $55.00 or $250 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BONUS NUMBERS" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BONUS NUMBERS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "BONUS NUMBERS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "BONUS NUMBERS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,120,000 tickets in the Instant Game No. 592. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 592 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,451,520	10.42
$2	1,088,640	13.89
$4	241,920	62.50
$5	181,440	83.33
$10	120,960	125.00
$20	60,480	250.00
$55	10,521	1,437.13
$250	1,260	12,000.00
$1,000	252	60,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.79. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 592 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 592, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501259
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 23, 2005

♦ ♦ ♦

Texas Parks and Wildlife Department

Request for Proposals

Texas Parks and Wildlife Department is announcing the Fiscal Year 2005 Request for Proposals (RFP) for Competitive ("Nontraditional") Section 6 funds. These are funds made available to state wildlife agencies through the Cooperative Endangered Species Conservation Fund (CESCF) from Section 6 of the Endangered Species Act (Department of Interior, U.S. Fish and Wildlife Service) for the conservation of threatened and endangered species. The CESCF programs are authorized through Endangered Species Act of 1973, 16 U.S.C. 1361 et seq., as amended. The codified program regulations can be found at 50 CFR 81.

These are competitive, nationwide (U. S.) funds - there are no funds directly ear-marked for Texas. Any proposals we submit will compete with other proposals regionally and nationally.

Funding (2005) is available as follows:

Grant Program	Purpose	Species Benefiting	Competition	Financial Match Requirement*
Recovery Land Acquisition **$13.4 Million**	acquisition of habitat in support of approved recovery goals or objectives	federally listed threatened or endangered species	regional	25% of estimated project cost; or 10% when two or more States or Territories implement a joint project
Habitat Conservation Planning Assistance **$8.5 Million**	support development of Habitat Conservation Plans (HCPs)	federally listed threatened or endangered species, proposed and candidate species, and unlisted species proposed to be covered by the HCP**	national	25% of estimated project cost; or 10% when two or more States or Territories implement a joint project
Habitat Conservation Plan (HCP) Land Acquisition **$48.6 Million**	acquisition of land associated with approved HCPs	federally listed threatened or endangered species, unlisted (including State-listed species), proposed and candidate species covered by the HCP**	national	25% of estimated project cost; or 10% when two or more States or Territories implement a joint project

*As required under Section 6 of the Endangered Species Act, grants to states and territories must include a minimum contribution by the project's non-Federal partners. These contributions can be in-kind staff time or donations.

**A species covered by the HCP is any species (listed or unlisted) that is included in the section 10(a)(1)(B) permit, thus receiving incidental take authorization.

In Texas, all proposals must be submitted through Texas Parks and Wildlife Department. These funds are not directly available to individual organizations, but are indirectly available through partnership with Texas Parks and Wildlife Department. Proposals must strictly follow guidelines indicated here.

The grant requires a 75:25 cost share, so applicants will need to provide the 25% match. The match is based upon Total Project Costs, and must be from non-federal funding sources.

NOTE: We are requesting that applicants include a budget line-item under federal funds in the amount of $5,000 for TPWD Grant Administrative Costs. Administering these grants is a substantial effort and until now there has been no way to help defray the costs. This amount

will not adversely affect a proposal's merits for consideration, but must be included in calculating the budget (see guidelines below).

Awards for these CESCF "Nontraditional" grants will be announced through a national press release and a memorandum to the Regional Directors of the Service for further notification of the applicants' selection for an award. Notification of an award through a press release or letter from a Regional Office is not an authorization to begin performance. The final exact amount of funds, the scope of work, and terms and conditions of a successful award will be determined in pre-award negotiations between the prospective recipient and the Service's representatives. The prospective recipient will be asked to sign an agreement that specifies the project requirements, such as the cost share, the project design, the time commitment for maintaining the project's benefits, and the reporting requirements, and that provides for Service access to the project area in order to check on its progress.

The recipient is reimbursed based on the cost-sharing formula in the agreement. An applicant should not initiate a project in expectation of CESCF funding, nor should they purchase materials or begin work until such time as they receive the final grant award document signed by an authorized Service official.

The full federal 2005 RFP for Competitive Section 6 awards can be accessed at: http://endangered.fws.gov/grants/section6/FY2005/RFP.pdf, but be aware that the Project Statement format (Section V) does not include page lengths- please see Project Statement Guidelines for required page lengths. Please see Section III of the federal 2005 RFP for minimum eligibility criteria and Section V for additional application review information, including proposal evaluation criteria. One Federal form, Standard Form-424 "Application for Federal Assistance," must also be completed and submitted with your project narrative description. This form is available on the Internet at http://www.whitehouse.gov/omb/grants/grants_forms.html , at http://training.fws.gov/fedaid/toolkit/toolkit.pdf ,or from the Regional CESCF coordinator.

Note: The federal RFP instructs applicants to fill out a Standard Form-424. Please disregard this request as TPWD will take care of it.

Your proposal should be submitted with the ranking criteria, as described under Section V of the federal 2005 RFP, in mind. Project descriptions that clearly address the specific ranking criteria in an organized manner will facilitate proposal review and scoring.

For complete details regarding the application process please see "Full Text of the Program Announcement" at http://endangered.fws.gov/grants/section6/index.html.

Below is a brief synopsis of the three available grants.

Habitat Conservation Planning (HCP) Assistance Grants - Through the development of regional Habitat Conservation Plans (HCPs), local governments incorporate species conservation into local land use planning, which streamlines the project approval process and facilitates economic development. The Habitat Conservation Planning Assistance Grants program provides funding to States to support the development of HCPs. Planning assistance grants may support planning activities such as document preparation, outreach, and baseline surveys and inventories.

Habitat Conservation Plan (HCP) Land Acquisition Grants - The HCP Land Acquisition program was established by Congress in fiscal year 1997. This program was designed to reduce conflicts between the conservation of listed species and land uses on specific parcels of land. Under this program, the Service provides grants to States for land acquisitions that are associated with approved HCPs. The Service considers the use of Federal acquisition dollars by States for habitat protection within and adjacent to HCP areas to be an important and effective mechanism to promote the recovery of threatened and endangered species.

The HCP Land Acquisition program has three primary purposes: 1) to fund land acquisitions that complement, but do not replace, private mitigation responsibilities contained in HCPs, 2) to fund land acquisitions that have important benefits for listed, proposed, and candidate species, and 3) to fund land acquisitions that have important benefits for ecosystems that support listed, proposed and candidate species.

Recovery Land Acquisition Grants - Loss of habitat is the primary threat to most listed species and land acquisition is often the most effective and efficient means of protecting habitats essential for recovery of listed species before development or other land use changes impair or destroy key habitat values. Land acquisition is costly and often neither the Service nor the States individually have the necessary resources to acquire habitats essential for recovery of listed species. Recovery Land Acquisition grant funds are matched by States and non-federal entities to acquire these habitats from willing sellers in support of approved species recovery plans.

Because the existing HCP Land Acquisition Grants Program provides substantial funding for land acquisitions associated with HCPs, the Recovery Land Acquisition Grants Program will not be used to fund land acquisitions associated with permitted HCPs.

PROPOSALS

Application proposals to Texas Parks and Wildlife Department for consideration under this grant program should strictly follow the guidelines below. FAILURE TO FOLLOW FORMAT INSTRUCTIONS WILL AUTOMATICALLY DISQUALIFY THE APPLICATION PACKAGE.

PROJECT STATEMENT GUIDELINES

Need. Why is the project being undertaken? (NOT TO EXCEED ONE PAGE)

Objective. What is to be accomplished during the period of the grant pursuant to the stated need? Specify what is to be accomplished within the time, money, and staffing allocated; identify a recognizable end point; and be quantifiable or verifiable. (NOT TO EXCEED ONE SENTENCE) Example: "To acquire by conservation easement during 2004-06 10,000 acres (Johnson Ranch) of prime watershed within the Barton Springs Edwards Aquifer, Texas."

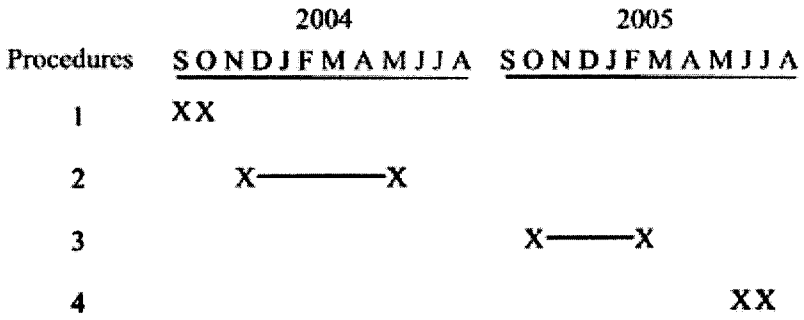
Expected Results or Benefits. What will be the results or benefits of accomplishing the objective? Try to provide quantifiable or verifiable resource benefits. (NOT TO EXCEED ONE HALF PAGE)

Approach. How will the objective be attained? Include only specific, numbered procedures. Keep procedures brief, simple and understandable. Final procedure should refer to Annual and/or Final Reports and their due dates. Provide telephone numbers and email addresses of key project personnel and cooperators.

Location. Where will the work (address) be done? Attach location map if needed.

Estimated Cost. Provide breakdown of what it will cost to attain the objective.

Milestone Schedule. Timetable for initiation and completion of procedures outlined in Approach. Years based upon project period. See attached graphic.



Literature Cited.

Budget. See attached graphic.

	Federal Share	Non-federal Share (match)	Total
1. Personnel			
Joe Bossman/Manager/500/$25.00	7,500.00	5,000.00	12,500.00
George Helperson/Clerk/800/$10.00	6,500.00	1,500.00	8,000.00
Ace Planning, Inc./plans/100/$125.00	12,500.00		12,500.00
Subtotal	26,500.00		
Fringe Benefits (25%; medical, FICA)	6,625.00	3,000.00	9,625.00
Total Personnel	33,125.00		
2. Travel			
Lodging (hotels)	3,000.00	2,000.00	5,000.00
Per diem ($55/day, 50 days)	1,250.00	1,750.00	3,000.00
Total Travel	4,250.00		
3. Equipment	10,000.00	20,000.00	30,000.00
4. Supplies	1,000.00	750.00	1,750.00
5. Contractual			
Transit Surveyors, Inc.; 100 Old Rd., Anywhere, TX	6,000.00		6,000.00
Ralph Lawyer; legal negotiations	50,000.00	1,950.00	51,950.00
Total Contractual	56,000.00		
6. Other	3,300.00	1,000.00	4,300.00
7. TPWD Administrative Cost	5,000.00		5,000.00
8. Totals	112,675.00	36,950.00	149,625.00
Percentages	75%	25%	100%

Personnel: List names of all individuals or agencies collaborating on project along with personnel/agency titles, estimated hours on project, and rates per hour. Does not include third-party contractors (separate item below).

Travel: Lodging, mileage, meals, per diem (as appropriate) per individual.

Equipment: capital expenses for equipment to be used for project.

Supplies: routine costs for items needing replenishment throughout project.

Contractual: expenses for services under contract with third parties, list names and contact information.

Fringe Benefits: additional personnel costs, including FICA, Retirement, Insurance, etc.

Indirect Charges: contractee administrative overhead, include rate as a percent and attach institutional rate agreement.

Other: Items not listed above. Itemize and include justification. For In-kind contributions provide signed commitment letters which include verifiable monetary valuations.

TPWD Administrative Cost: flat $5,000.00 TPWD administrative fee charged to Federal Share.

Total Project Costs: sums of Federal Share, State Share, Totals columns; at least 25% of the latter represents the match.

DEADLINE FOR RECEIPT OF PROPOSALS IS APRIL 29, 2005.

Proposal should be emailed in Microsoft Word, or compatible, format to:

Dr. Craig Farquhar, Section 6 Coordinator, Wildlife Science, Research and Diversity Program, Texas Parks and Wildlife Department, 3000 IH 35, South, Suite 100, Austin, TX 78704, Off. tel: 512-912-7018, Off. fax: 512-912-7058, e-mail: craig.farquhar@tpwd.state.tx.us

TRD-200501217
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Filed: March 18, 2005

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Texas Department of Public Safety

Notice of Public Hearing

The Texas Department of Public Safety, in accordance with Administrative Procedures and Texas Register Act, Texas Government Code, §2001, et seq., and Texas Transportation Code, Chapter 644, is holding a public hearing on April 11, 2005, at 9:00 a.m., in the Texas Department of Public Safety Motor Carrier Bureau (Building P) Conference Room, 6200 Guadalupe Street, Austin, Texas.

The purpose of this hearing is to receive comments from all interested persons regarding adoption of Administrative Rules §§4.1, 4.11, and 4.13 - 4.19 regarding Hazardous Material and Transportation Safety, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles. The proposed rules were published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1426 - 1436).

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Mark Rogers, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print, or Braille, are requested to contact Major Rogers at (512) 424- 2116, three working days prior to the hearing so that appropriate arrangements can be made.

TRD-200501267
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Filed: March 23, 2005

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Public Utility Commission of Texas

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 15, 2005, for a service provider certificate of operating authority (SPCOA), pursuant to Public Utility Regulatory Act (PURA) §§54.151 - 54.156. A summary of the application follows.

Docket Title and Number: Application of American Broadband, Incorporated for a Service Provider Certificate of Operating Authority, Docket Number 30868 before the Public Utility Commission of Texas.

Applicant intends to provide optional services and T1-Private Line services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 6, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30868.

TRD-200501198
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 17, 2005

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 17, 2005, for a service provider certificate of operating authority (SPCOA), pursuant to Public Utility Regulatory Act (PURA) §§54.151 - 54.156. A summary of the application follows.

Docket Title and Number: Application of Acceris Communications Corp. for a Service Provider Certificate of Operating Authority, Docket Number 30870 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, IDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, long distance, and wireless services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 6, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30870.

TRD-200501219
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 21, 2005

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 18, 2005, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Charter Fiberlink TX - CCO, LLC for a Service Provider Certificate of Operating Authority, Docket Number 30881 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, optical services, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, and long distance services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 6, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30881.

TRD-200501257
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 22, 2005

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Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On March 17, 2005, Plexnet filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60335. Applicant intends to relinquish its certificate.

The Application: Application of Plexnet to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 30878.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 6, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30878.

TRD-200501254
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 22, 2005

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Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On March 17, 2005, Plexnet Communications Services, Inc. filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60107. Applicant intends to relinquish its certificate.

The Application: Application of Plexnet Communications Services, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 30879.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 6, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30879.

TRD-200501255
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 22, 2005

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Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On March 18, 2005, USLD Communications, Inc. filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60003. Applicant intends to relinquish its certificate.

The Application: Application of USLD Communications, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 30880.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 6, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30880.

TRD-200501256
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 22, 2005

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Request for Proposals for a Financial Advisor to Assist the Commission with Electric Utility Issuances of Transition Bonds

The Public Utility Commission of Texas (commission or PUCT) is issuing a Request for Proposals (RFP) for a financial advisor to provide services to the PUCT. The advisor will assist the commission with preparing and/or implementing the financing order authorizing recovery of stranded costs through securitization and with the subsequent issuances of transition bonds to ensure compliance with Subchapter G of the Public Utility Regulatory Act (PURA) and consistency with the terms of the respective financing orders. The utility anticipated to have a securitization transaction under this engagement is CenterPoint Energy Houston, LLC.

To be considered, the proposals must be time/date stamped at the PUCT Central Records office on or before 5:00 p.m., C.S.T., Friday, April 8, 2005. The commission expects to designate a vendor on or before April 15, 2005, and the chosen vendor must be prepared to commence service during the month of April 2005.

Project description. The Public Utility Regulatory Act (PURA) Chapter 39 (specifically, §§39.001, 39.201, 39.252, and 39.262) allows electric utilities with generation-related assets to recover the reasonable excess costs over the market value of those assets. Electric utilities having such costs (called "stranded costs"), may elect to apply for a financing order to recover the costs through the issuance of transition bonds that are secured by transition charges approved by the commission. The primary purpose of this engagement is to discharge the commission's mandate to ensure that the structure and pricing of transition bonds results in the lowest transition bond charges consistent with market conditions and the terms of the financing orders.

Proposers should review PURA Subchapter G in its entirety and prior financing orders issued by the commission in Dockets 21528, 21665 and 25230 that are available on the PUCT website at www.puc.state.tx.us/rules/index.cfm and http://interchange.puc.state.tx.us, respectively.

Eligible Proposers. Proposers should have (1) extensive experience in investment banking; (2) extensive experience in the structuring, marketing and pricing of either taxable or tax exempt investor owned electric utility bonds, asset backed securities, or public power bonds; (3) experience as a financial advisor in the capital markets; and (4) proposers must retain experienced outside bond counsel throughout this assignment, with the cost of such counsel to be included in the proposal.

Compensation. Professional fees and the proposed compensation structure must be fair and reasonable to provide the required services and shall not exceed the cap listed in the RFP. Services to be purchased from subcontractors, including any amounts subcontracted to HUBs, consultants, and other entities must be specified. If a proposer believes that there are additional tasks critical to this RFP, the proposer should identify those tasks and state why the additional tasks are needed. Compensation, as approved by the commission, will be paid by transition bond issuers and/or underwriters and will be paid at the closing of each securitization transaction authorized by a commission financing order.

Selection criteria. The evaluation team will recommend selection of a proposal for this program based on a number of factors, including: 1) the proposer's ability to provide the required services, 2) demonstrated competence and qualifications of the proposer, and 3) the reasonableness of the proposed fee. A team of evaluators will review the proposals submitted. A description of selection criteria is set forth in the RFP. Proposers will be notified in writing of the selection.

The proposal. A complete copy of the RFP may be obtained by written request to Ben Delamater, Purchaser, Public Utility Commission of Texas, William B. Travis Building, 1701 North Congress Avenue, Austin, TX 78701, or by fax (512) 936- 7058, or by email ben.delamater@puc.state.tx.us. The RFP will be available Friday, April 1, 2005 and will be e-mailed on that date to all parties who have requested a copy. You may also download the RFP from the PUCT website www.puc.state.tx.us, under Hot Topics.

Deadline for receipt of proposals. Proposals must be received no later than 5:00 p.m. on Friday, April 8, 2005, in the Public Utility Commission of Texas Central Records office, Room G-113, Public Utility Commission of Texas, William B. Travis Building, 1701 North Congress Avenue, Austin, TX 78701. Proposals received in Central Records after 5:00 p.m. on Friday, April 8, 2005 will not be considered. Proposals may be received in Central Records between 8:00 a.m. and 5:00 p.m., Monday through Friday, except on holidays. Regardless of the method of submission of the proposal, the commission will rely on the time/date stamp of Central Records in establishing the time and date of receipt. No submission by facsimile or email will be accepted. Proposals will be forwarded to Mr. Delamater by Central Records.

TRD-200501268
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 23, 2005

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Texas Council on Purchasing from People with Disabilities

Correction of Error

The Texas Council on Purchasing from People with Disabilities proposed amendments to 40 TAC §189.6 in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1620). Due to an error in the submitted document, the wrong text was published for §189.6(d)(2)(B). The error appears on page 1621, first column. Subsection (d)(2)(B) should read as follows:

(B) The Certification Subcommittee shall review each application and documentation and, if acceptable, forward the recommendations to the Council for approval. Once approved the Council will notify the CRP in writing of their approved designation and present each with a certification number. Only the Council can approve eligibility. A CRP shall not participate in the State Use Program prior to the Council's certification.

TRD-200501258

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Texas Workers' Compensation Commission

Invitation to Apply to the Medical Advisory Committee (MAC)

The Texas Workers' Compensation Commission seeks to have a diverse representation on the MAC and invites qualified individuals from all regions of Texas to apply for openings on the MAC in accordance with the eligibility requirements of the *Procedures and Standards for the Medical Advisory Committee*. The Medical Review Division is currently accepting applications for the following Medical Advisory Committee representative vacancies:

Primary

* Public Health Care Facility

Alternate

* Public Health Care Facility

* Dentist

* Podiatrist

* Employer

* Employee

* General Public Representative 1

* General Public Representative 2

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members who are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the general public. Primary members are required to attend all Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which they are appointed. The alternate member may attend all meetings, however during a primary member's absence, the alternate member must attend meetings to which the primary member is appointed. Requirements and responsibilities of members are established in the Procedures and Standards for the Medical Advisory Committee as adopted by the Commission.

The Medical Advisory Committee meetings must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings. Voluntary service on the Medical Advisory Committee is greatly appreciated by the TWCC Commissioners and the TWCC Staff.

The purpose and task of the Medical Advisory Committee, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines, are outlined in the Texas Workers' Compensation Act, §413.005.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at *http://www.twcc.state.tx.us*. Click on 'Commission Meetings', then 'Medical Advisory Committee'. Applications may also be obtained by calling Jane McChesney, MAC Coordinator, at 512-804-4855 or Ruth Richardson, Manager of Monitoring, Analysis and Education, Medical Review Division at 512-804-4850.

The qualifications as well as the terms of appointment for all positions are listed in the Procedures and Standards for the Medical Advisory Committee. These Procedures and Standards are as follows:

LEGAL AUTHORITY The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

PURPOSE AND ROLE The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

COMPOSITION Membership. The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

Terms of Appointment: Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

RESPONSIBILITY OF MAC MEMBERS Primary Members. Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

Alternate Members. Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

Committee Officers. The TWCC Commissioners designate the chairman of the MAC. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

Responsibilities of the Chairman: Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division; prior to meetings, confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate:

a. Preparation of a suitable agenda.

b. Planning MAC activities.

c. Establishing meeting dates and calling meetings.

d. Establishing subcommittees.

e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

COMMITTEE SUPPORT STAFF The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

SUBCOMMITTEES The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

WORK GROUPS When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

WORK PRODUCT No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

MEETINGS Frequency of Meetings. Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

CONDUCT AS A MAC MEMBER Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200501245
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: March 22, 2005

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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